



# FEDERAL REGISTER

---

Vol. 82

Thursday,

No. 70

April 13, 2017

Pages 17745–17932

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see [www.ofr.gov](http://www.ofr.gov).

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at [www.fdsys.gov](http://www.fdsys.gov), a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, [gpocusthelp.com](mailto:gpocusthelp.com).

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 82 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche 202-512-1800  
Assistance with public subscriptions 202-512-1806

**General online information** 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

Paper or fiche 202-512-1800  
Assistance with public single copies 1-866-512-1800  
(Toll-Free)

### FEDERAL AGENCIES

#### Subscriptions:

Assistance with Federal agency subscriptions:

Email [FRSubscriptions@nara.gov](mailto:FRSubscriptions@nara.gov)  
Phone 202-741-6000



# Contents

Federal Register

Vol. 82, No. 70

Thursday, April 13, 2017

## Agency for Toxic Substances and Disease Registry

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17837–17838

## Agriculture Department

See Forest Service

## Antitrust Division

### NOTICES

Proposed Final Judgments and Competitive Impact Statements:  
United States v. DIRECTV Group Holdings, LLC, and ATT, Inc., 17859–17879

## Bureau of Safety and Environmental Enforcement

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Open and Nondiscriminatory Access to Oil and Gas Pipelines under OCS Lands Act, 17853–17855  
Platforms and Structures, 17855–17859

## Centers for Disease Control and Prevention

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17838–17840  
Decisions to Evaluate Petitions to Designate Classes of Employees for Inclusion in Special Exposure Cohorts:  
Idaho Chemical Processing Plant in Scoville, ID, 17838

## Coast Guard

### RULES

Safety Zones:  
Monongahela 4th of July Celebration, Monongahela River Miles 32.0 to 33.0, Monongahela, PA, 17754  
Special Local Regulations:  
Red Bull Air Race—San Diego 2017, San Diego Bay, CA, 17751–17753

### PROPOSED RULES

Special Local Regulations and Safety Zones:  
Recurring Marine Events Held in Coast Guard Sector Northern New England Captain of Port Zone, 17782–17791  
Special Local Regulations:  
Coos Bay, North Bend, OR, 17780–17782

## Commerce Department

See Foreign-Trade Zones Board  
See International Trade Administration  
See National Oceanic and Atmospheric Administration

## Defense Department

### NOTICES

Meetings:  
Defense Advisory Committee on Investigation Prosecution and Defense of Sexual Assault in Armed Forces, 17827–17828

## Employment and Training Administration

### NOTICES

Labor Certification Process for Temporary Employment of H–2A and H–2B Foreign Workers in United States: 2017 Allowable Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging, 17881–17882

## Energy Department

### NOTICES

Meetings:  
Environmental Management Site-Specific Advisory Board Chairs, 17828

## Environmental Protection Agency

### PROPOSED RULES

Evaluation of Existing Regulations, 17793

## Federal Aviation Administration

### RULES

Airworthiness Directives:  
Airbus Airplanes, 17749–17751

### PROPOSED RULES

Airworthiness Directives:  
Airbus Airplanes, 17770–17773  
The Boeing Company Airplanes, 17773–17776  
Amendment of Class E Airspace:  
Medford, OR, 17776–17778  
Pauls Valley, OK, 17778–17780

## Federal Communications Commission

### RULES

Structure and Practices of Video Relay Services Program, 17754–17765

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17828–17833

## Federal Emergency Management Agency

### NOTICES

Emergency Declarations:  
Michigan; Amendment No. 2, 17849  
Major Disaster Declarations:  
California, 17850  
Kansas; Amendment No. 1, 17848  
Oklahoma; Amendment No. 1, 17850  
Major Disasters and Related Determinations:  
California, 17848–17849  
Nevada, 17849–17850

## Federal Railroad Administration

### RULES

Implementation of Federal Civil Penalties Inflation Adjustment Act Improvements Act:  
Violation of Federal Railroad Safety Law, Federal Railroad Administration Safety Regulation or Order, or Hazardous Material Transportation Laws or Regulations, Orders, Special Permits, and Approvals Issued under Those Laws, 17765

**Federal Reserve System****NOTICES**

Changes in Bank Control:

Acquisitions of Shares of Banks or Bank Holding Companies, 17833

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 17833–17834

**Federal Trade Commission****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17834–17835

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

Generic Clearance for Collection of Qualitative Feedback on Agency Service Delivery, 17835–17837

**Food and Drug Administration****NOTICES**

Guidance:

Genome Editing in New Plant Varieties Used for Foods, 17840–17841

Regulation of Intentionally Altered Genomic DNA in Animals, 17844–17845

Medical Devices:

Exemptions from Premarket Notification; Class I Devices, 17841–17844

**Foreign-Trade Zones Board****NOTICES**

Production Activities; Authorizations:

AGRU America Charleston, LLC (Industrial Pipes), Foreign-Trade Zone 21—Dorchester County, SC, 17796

Subzone Status; Approvals:

Wacker Polysilicon North America, LLC, Charleston, TN, 17796–17797

**Forest Service****NOTICES**

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

National Visitor Use Monitoring, 17795–17796

Environmental Impact Statements; Availability, etc.:

Superior National Forest; Minnesota; Application for Withdrawal, 17794–17795

**Health and Human Services Department**

*See* Agency for Toxic Substances and Disease Registry

*See* Centers for Disease Control and Prevention

*See* Food and Drug Administration

*See* National Institutes of Health

**Homeland Security Department**

*See* Coast Guard

*See* Federal Emergency Management Agency

**Housing and Urban Development Department****NOTICES**

Housing Trust Fund Allocations, 17851–17852

**Inter-American Foundation****NOTICES**

Meetings; Sunshine Act, 17852

**Interior Department**

*See* Bureau of Safety and Environmental Enforcement

*See* Land Management Bureau

**International Trade Administration****NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China, 17797–17798

Malleable Cast Iron Pipe Fittings from the People's Republic of China, 17798–17799

**International Trade Commission****NOTICES**

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

Certain Pumping Bras, 17859

**Justice Department**

*See* Antitrust Division

**NOTICES**

Advancing Forensic Science, 17879–17881

Proposed Consent Decrees, 17881

**Labor Department**

*See* Employment and Training Administration

*See* Workers Compensation Programs Office

**NOTICES**

Meetings:

Advisory Committee on Veterans' Employment, Training and Employer Outreach, 17882–17883

**Land Management Bureau****NOTICES**

Meetings:

John Day—Snake Resource Advisory Council, 17852–17853

**Morris K. and Stewart L. Udall Foundation****NOTICES**

Meetings; Sunshine Act, 17884

**National Institutes of Health****NOTICES**

Meetings:

National Institute of Allergy and Infectious Diseases, 17846

National Institute of Diabetes and Digestive and Kidney Diseases, 17845, 17847

National Institute on Drug Abuse, 17845–17847

National Science Advisory Board for Biosecurity, 17847–17848

Office of Director, 17847

**National Oceanic and Atmospheric Administration****RULES**

Atlantic Highly Migratory Species:

Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Groups Retention Limit Adjustment, 17765–17767

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17826–17827

Takes of Marine Mammals Incidental to Specified Activities:

San Francisco Ferry Terminal Expansion Project, South Basin Improvements Project, 17799–17826

**Neighborhood Reinvestment Corporation****NOTICES**

Meetings; Sunshine Act, 17884

**Nuclear Regulatory Commission****RULES**

List of Approved Spent Fuel Storage Casks:

AREVA Inc., Standardized NUHOMS Cask System, 17749

**PROPOSED RULES**

Emergency Preparedness for Small Modular Reactors and Other New Technologies:

Draft Regulatory Guide, 17768–17770

**NOTICES**

Environmental Assessments; Availability, etc.:

Waste Control Specialists, LLC, Andrews County, TX; Exemption Request, 17887–17890

Environmental Impact Statements; Availability, etc.:

Tennessee Valley Authority; Clinch River Nuclear Site Permit Application, 17885–17887

License Applications; Amendments:

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2, 17884–17885

**Personnel Management Office****NOTICES**

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

Annuity Supplement Earnings Report, 17896

Application for Refund of Retirement Deductions and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions under Civil Service Retirement System, 17897

Application to Make Deposit or Redeposit and Application to Make Service Credit Payment for Civilian Service, 17891–17892

CSRS/FERS Documentation in Support of Disability Retirement Application, 17893

Designation of Beneficiary, Federal Employees Retirement System, 17890–17891

Designation of Beneficiary: Civil Service Retirement System, SF 2808, 17895–17896

Notification of Application for Refund of Retirement Deductions and Current/Former Spouse(s); Notification of Application for Refund of Retirement Deductions under FERS, 17893–17894

Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, 17892

Representative Payee Application, and Information Necessary for Competency Determination, 17891

Excepted Service, 17894–17895

**Postal Regulatory Commission****NOTICES**

New Postal Products, 17897–17898

**Postal Service****NOTICES**

Product Changes:

First-Class Package Service Negotiated Service Agreement, 17899

Priority Mail Express Negotiated Service Agreement, 17899

Priority Mail Express, Priority Mail, and First-Class Package Service Negotiated Service Agreement, 17898–17899

Priority Mail Negotiated Service Agreement, 17899

**Presidential Documents****PROCLAMATIONS**

Special Observances:

National Former Prisoner of War Recognition Day (Proc. 9591), 17747–17748

Pan American Day and Pan American Week (Proc. 9590), 17745–17746

**Securities and Exchange Commission****NOTICES**

Self-Regulatory Organizations; Proposed Rule Changes:

Bats BZX Exchange, Inc., 17913–17916

BOX Options Exchange, LLC, 17929–17930

Depository Trust Co., 17901–17906

Fixed Income Clearing Corp., 17906–17913

MIAX PEARL, LLC, 17927–17929

National Securities Clearing Corp., 17916–17919, 17921–17927

New York Stock Exchange, LLC, 17919–17921

NYSE MKT, LLC, 17899–17901

**State Department****NOTICES**

Charter Renewals:

U.S. National Commission for United Nations Educational, Scientific, and Cultural Organization, 17931

**Transportation Department**

See Federal Aviation Administration

See Federal Railroad Administration

**Veterans Affairs Department****PROPOSED RULES**

Loan Guaranty:

Revisions to Allowable Charges and Fees Assessed Incident to VA-Guaranteed Home Loans, 17792–17793

**NOTICES**

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

Compliance Inspection Report; Correction, 17931

**Workers Compensation Programs Office****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17883–17884

**Reader Aids**

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

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

**CFR PARTS AFFECTED IN THIS ISSUE**

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

**3 CFR**

**Proclamations:**

9590.....17745  
9591.....17747

**10 CFR**

72.....17749

**Proposed Rules:**

50.....17768  
52.....17768

**14 CFR**

39.....17749

**Proposed Rules:**

39 (2 documents) .....17770,  
17773  
71 (2 documents) .....17776,  
17778

**33 CFR**

100.....17751  
165.....17754

**Proposed Rules:**

100 (2 documents) .....17780,  
17782  
165.....17782

**38 CFR**

**Proposed Rules:**

36.....17792

**40 CFR**

**Proposed Rules:**

Ch. I.....17793  
Ch. IV.....17793  
Ch. V.....17793  
Ch. VI.....17793  
Ch. VII.....17793

**47 CFR**

64.....17754

**49 CFR**

209.....17765  
213.....17765  
214.....17765  
215.....17765  
216.....17765  
217.....17765  
218.....17765  
219.....17765  
220.....17765  
221.....17765  
222.....17765  
223.....17765  
224.....17765  
225.....17765  
227.....17765  
228.....17765  
229.....17765  
230.....17765  
231.....17765  
232.....17765  
233.....17765  
234.....17765  
235.....17765  
236.....17765  
237.....17765  
238.....17765  
239.....17765  
240.....17765  
241.....17765  
242.....17765  
243.....17765  
244.....17765  
270.....17765  
272.....17765

**50 CFR**

635.....17765

---

**Presidential Documents**

---

Title 3—

**Proclamation 9590 of April 7, 2017****The President****Pan American Day and Pan American Week, 2017****By the President of the United States of America****A Proclamation**

Pan American Day and Pan American Week commemorate the 127th anniversary of the conclusion of the First International Conference of American States. This inter-American gathering planted the seed for the creation of the Organization of American States, an enduring organization for the promotion of democracy, security, human rights, and economic development throughout the Americas. Pan American Day and Pan American Week remind us to reflect on the shared history of the Americas and the Caribbean and to commit to strengthening relationships with our regional partners based on common interests and shared values.

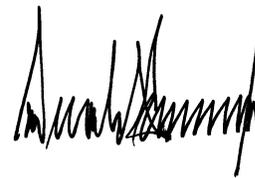
My Administration is dedicated to improving border security, dismantling transnational criminal networks, and combating terrorism to ensure the safety of our citizens. We are committed to constructive and cooperative engagement with our longstanding Pan American partners, building on existing linkages and forging new relationships, to advance these critical objectives.

The governments and people of the Americas are united through longstanding institutional, economic, cultural, and social bonds. In conversations and meetings with regional leaders, I continue to reinforce America's commitment to those bonds and to advancing the Pan American ideals of peace and prosperity across the Western Hemisphere. As these conversations continue, we will find new ways to promote enhanced, reciprocal relationships among the Pan American States, advancing the well-being of people throughout the region.

As we celebrate Pan American Day and Pan American Week, commemorating the formation of our Pan American partnership on April 14, 1890, let us reaffirm our close ties and pledge to work together on shared priorities that are vital to the interests of our countries.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 14, 2017, as Pan American Day and April 9 through April 15, 2017, as Pan American Week. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, 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.



---

## Presidential Documents

**Proclamation 9591 of April 7, 2017**

### **National Former Prisoner of War Recognition Day, 2017**

**By the President of the United States of America**

#### **A Proclamation**

On National Former Prisoner of War Recognition Day, America honors our service men and women imprisoned during war. These patriots have moved and inspired our Nation through their unyielding sacrifices and devout allegiance. We honor the strength through adversity of all of these heroes from our Nation's wars and conflicts, from the American Revolution to the World Wars, from Korea to Vietnam, from Desert Storm to the War on Terror.

American service members serve and fight selflessly each day to secure the freedoms we often take for granted. They bear the full weight of their oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic," in which there is no safety clause. None know this so well as our former prisoners of war (POWs). According to the Department of Veterans Affairs, more than half a million Americans have been captured and interned as POWs since the American Revolution.

This year marks the 75th anniversary of the Bataan Death March. After the surrender of the Bataan peninsula in the Philippines on April 9, 1942, Filipino and American soldiers were rounded up and forced to march 60 miles from Mariveles to San Fernando. An estimated 500 Americans died during the march, as they were starved, beaten, and tortured to death. Those who reached San Fernando were taken in cramped boxcars to POW camps, where thousands more Americans died of disease and starvation.

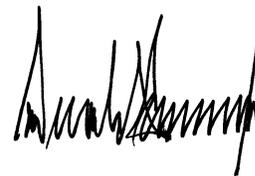
These stories remind us of the great sacrifice and bravery of our men and women in the Armed Forces. Throughout our history, they have risked everything to defend our country. They have been stripped of liberty, and regained it. They have faced the darkness of captivity, and emerged to the warm light of freedom. These victories have no match. These triumphs ignite the flame of liberty deep within their hearts, and in ours, and make America the great Nation it is today.

But in celebrating those POWs who returned from captivity, we also solemnly remember and honor those who died in captivity. They paid the ultimate price for their love of country.

As President, I am committed to providing our veterans, and especially our former POWs, with the support, care, and resources they deserve. Our country owes a debt to our heroes that we can never adequately repay, but which we will always honor each day.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2017, as National Former Prisoner of War Recognition Day. I call upon Americans to observe this day by honoring the service and sacrifice of all our former prisoners of war and to express our Nation's eternal gratitude for their sacrifice. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, 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.



# Rules and Regulations

Federal Register

Vol. 82, No. 70

Thursday, April 13, 2017

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC-2016-0200]

RIN 3150-AJ86

#### List of Approved Spent Fuel Storage Casks: AREVA Inc., Standardized NUHOMS® Cask System, Certificate of Compliance No. 1004, Amendment No. 14, and Revision 1 of the Initial Certificate, Amendment Nos. 1 Through 11, and Amendment No. 13

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of April 25, 2017, for the direct final rule that was published in the **Federal Register** on January 25, 2017. The direct final rule amended the NRC's spent fuel storage regulations by revising the "List of approved spent fuel storage casks" to include Amendment No. 14 and Revision 1 to the Initial Certificate, Amendment Nos. 1 through 11, and Amendment No. 13 to Certificate of Compliance (CoC) No. 1004 for the AREVA Inc., Standardized NUHOMS® Cask System.

**DATES:** *Effective Date:* The effective date of April 25, 2017, for the direct final rule published January 25, 2017 (82 FR 8353), is confirmed.

**ADDRESSES:** Please refer to Docket ID NRC-2016-0200 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-2016-0200. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto: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](mailto: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 the **SUPPLEMENTARY INFORMATION** section.

- *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:** Edward Lohr, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0253; email: [Edward.Lohr@nrc.gov](mailto:Edward.Lohr@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On January 25, 2017 (82 FR 8353), the NRC published a direct final rule amending § 72.214 of title 10 of the *Code of Federal Regulations* by revising the "List of approved spent fuel storage casks" to include Amendment No. 14 and Revision 1 to the Initial Certificate, Amendment Nos. 1 through 11, and Amendment No. 13 to CoC No. 1004 for the AREVA Inc., Standardized NUHOMS® Cask System. Amendment No. 14 revises multiple items in the technical specifications (TSs) for dry shielded canister (DSC) models listed under CoC No. 1004; most of these revisions involve changes to the authorized contents. The revisions to the Initial Certificate, Amendment Nos. 1 through 11, and Amendment No. 13 remove language in the TSs that requires a transfer cask containing a DSC to be returned to the spent fuel pool following a drop of over 15 inches.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on April 25,

2017. As described more fully in the direct final rule, a significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Because no significant adverse comments were received, the direct final rule will become effective as scheduled.

During the comment period for the direct final rule, the NRC identified misspellings and page numbering errors in the draft CoCs and TSs associated with Revision 1 of the Initial Certificate, Amendment Nos. 1 through 11, and Amendment No. 13. The final CoCs and TSs have been corrected for these administrative errors. Also, the draft CoCs were changed to update the signature block for issuing authority. The final CoCs, TSs, and the final Safety Evaluation Report for Revision 1 of the Initial Certificate, Amendment Nos. 1 through 11, and Amendment No. 13 can be viewed in ADAMS under Accession No. ML17067A412.

The final CoC, TSs, and the final Safety Evaluation Report for Amendment No. 14 to CoC No. 1004 can be viewed in ADAMS under Accession No. ML17093A261.

Dated at Rockville, Maryland, this 7th day of April, 2017.

For the Nuclear Regulatory Commission.

**Cindy Bladey,**

*Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2017-07422 Filed 4-12-17; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2017-0245; Directorate Identifier 2017-NM-023-AD; Amendment 39-18841; AD 2017-07-03]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Airbus Model A330–243, –243F, –341, –342, and –343 airplanes. As published, the AD number specified in the preamble and regulatory text is incorrect. This document corrects that error. In all other respects, the original document remains the same.

**DATES:** This correction is effective April 17, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 17, 2017 (82 FR 15985, March 31, 2017).

**ADDRESSES:** For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.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–2017–0245.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; 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 address for the Docket Office (phone: 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:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:** As published, Airworthiness Directive 2017–07–05, Amendment 39–18841 (82 FR 15985, March 31, 2017), requires an inspection to determine if affected hydraulic pressure tube assemblies are installed, and replacement with serviceable hydraulic pressure tube

assemblies if necessary, for all Airbus Model A330–243, –243F, –341, –342, and –343 airplanes. That AD also requires repetitive replacements of serviceable hydraulic pressure tube assemblies.

#### Need for the Correction

As published, the AD number specified in the preamble and regulatory text is incorrect. The incorrectly specified number was AD 2017–07–05, which is assigned to another AD; the correct number is AD 2017–07–03.

#### Related Service Information Under 14 CFR Part 51

Airbus has issued Alert Operators Transmission (AOT) A71L012–16, Revision 01, dated February 24, 2017. The service information describes procedures for replacing hydraulic pressure tube assembly, part number (P/N) AE711121–18, and hydraulic pressure tube assembly, P/N AE711121–18 Rev A. 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.

#### Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, we are publishing the entire rule in the **Federal Register**.

The effective date of this AD remains April 17, 2017.

Since this action only corrects an AD number, it has no adverse economic impact and imposes no additional burden on any person. Therefore, we have determined that notice and public procedures are unnecessary.

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

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

#### Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

**2017–07–03 Airbus:** Amendment 39–18841; Docket No. FAA–2017–0245; Directorate Identifier 2017–NM–023–AD.

#### (a) Effective Date

This AD is effective April 17, 2017.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Airbus Model A330–243, –243F, –341, –342, and –343 airplanes, certificated in any category, all manufacturer serial numbers.

#### (d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

#### (e) Reason

This AD was prompted by a determination that cracks can develop on the ripple damper of the hydraulic pressure tube assembly, which could lead to hydraulic leakage and consequent loss of the green hydraulic system. This AD was also prompted by reports of failure of the ripple damper of the hydraulic pressure tube assembly. We are issuing this AD to prevent cracking and failure of the ripple damper of the hydraulic pressure tube assembly, which could, in combination with other system failures, result in reduced control of the airplane.

#### (f) Compliance

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

#### (g) Definition of Affected Part

For the purpose of this AD, a hydraulic pressure tube assembly, part number (P/N) AE711121–18, as introduced by Airbus mod 205242, is hereafter referred to as an “affected part” in this AD.

#### (h) Definition of Serviceable Part

For the purpose of this AD, a “serviceable part” is a hydraulic pressure tube assembly (which has a double-welded ripple damper installed), P/N AE711121–18 Rev A, that has accumulated fewer than 800 total flight cycles since first installation on an airplane. The hydraulic pressure tube assembly, P/N AE711121–18 Rev A, is introduced by Airbus mod 206979 on the production line.

#### (i) Identification of Affected Parts

Within 15 days after April 17, 2017 (the effective date of this AD), inspect to determine the part number of the hydraulic pressure tube assembly that is installed on each engine. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the hydraulic pressure tube assembly can be conclusively determined from that review.

#### (j) Replacement of Affected Parts

Within the compliance time specified in table 1 to paragraph (j) of this AD, as

applicable, or within 4 months after April 17, 2017 (the effective date of this AD), whichever occurs first, replace each affected part (see paragraph (g) of this AD) with a serviceable part (see paragraph (h) of this AD), in accordance with the instructions of Airbus Alert Operators Transmission (AOT) A71L012–16, Revision 01, dated February 24, 2017.

TABLE 1 TO PARAGRAPH (j) OF THIS AD—REPLACEMENT COMPLIANCE TIMES

Flight cycles accumulated *	Compliance time
Fewer than 775 total flight cycles .....	Before exceeding 800 total flight cycles on the affected hydraulic pressure tube assembly since first installation on an airplane.
775 total flight cycles or more .....	Within 25 flight cycles after April 17, 2017 (the effective date of this AD).
An unknown number of flight cycles accumulated .....	Within 25 flight cycles after April 17, 2017 (the effective date of this AD).

\* Unless specified otherwise, the flight cycles in the “flight cycles accumulated” column of table 1 to paragraph (j) of this AD are those accumulated by an affected hydraulic pressure tube assembly, on April 17, 2017 (the effective date of this AD), since first installation on an airplane.

**(k) Repetitive Replacement of Serviceable Parts—Life Limit**

Before a serviceable part (see paragraph (h) of this AD) exceeds 800 total flight cycles since first installation on an airplane, replace it with a serviceable part, in accordance with the instructions of Airbus AOT A71L012–16, Revision 01, dated February 24, 2017.

**(l) Engine Installation Limitation**

As of April 17, 2017 (the effective date of this AD), except as required by paragraph (m) of this AD, it is allowed to install on any airplane a replacement engine having an affected part (see paragraph (g) of this AD) installed, provided that, before that affected part exceeds 800 total flight cycles since first installation on an airplane, or within 4 months after April 17, 2017 (the effective date of this AD), whichever occurs first, the part is replaced with a serviceable part (see paragraph (h) of this AD), in accordance with the instructions of Airbus AOT A71L012–16, Revision 01, dated February 24, 2017.

**(m) Parts and Engine Installation Prohibition**

As of 4 months after April 17, 2017 (the effective date of this AD): Do not install on any airplane an affected part (see paragraph (g) of this AD), or an engine having an affected part installed.

**(n) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before April 17, 2017 (the effective date of this AD) using Airbus AOT A71L012–16, dated December 22, 2016.

**(o) 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; 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 European Aviation Safety Agency (EASA); or Airbus’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(p) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2017–0041, dated February 24, 2017; corrected February 28, 2017, 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–2017–0245.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; 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 (q)(4) and (q)(5) of this AD.

**(q) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on April 17, 2017 (82 FR 15985, March 31, 2017).

(i) Airbus Alert Operators Transmission (AOT) A71L012–16, Revision 01, dated February 24, 2017.

(ii) Reserved.

(4) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.com>.

(5) 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.

(6) 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 5, 2017.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2017–07442 Filed 4–12–17; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG–2017–0096]

**RIN 1625–AA08**

**Special Local Regulation; Red Bull Air Race—San Diego 2017; San Diego Bay, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily establishing special local regulations for the Red Bull Air Race—San Diego 2017 event held on the navigable waters of San Diego Bay, California. This action is necessary to provide for the safety of life on navigable waters during the event. This

action will restrict vessel traffic in specific waters of San Diego Bay from April 14, 2017, from 8:00 a.m. to 6:30 p.m., from April 15, 2017 from 10:00 a.m. to 6:00 p.m., and from April 16, 2017 from 10:00 a.m. to 4:30 p.m. We invite your comments on this rulemaking.

**DATES:** This rule is effective from April 14, 2017 through April 16, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2017–0096 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Robert D. Cole, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email [D11MarineEventsSD@uscg.mil](mailto:D11MarineEventsSD@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule
BNM	Broadcast Notice to Mariners
LNM	Local Notice to Mariners
COTP	Captain of the Port

##### II. Regulatory Information

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency finds good cause that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule as there is not enough time to complete notice and comment rulemaking before the event is scheduled to take place due to specific event details that were not provided by the event sponsor in time. For this reason, publishing an NPRM would be impracticable.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the *Federal Register*. This rule is necessary for the safety of life on these navigable waters during the airplane race. For the reasons above, it

would be impracticable to delay this rule to provide a full 30 days notice.

##### III. Background, Purpose and Legal Basis

The Red Bull Air Race—San Diego 2017 event will involve low flying airplanes racing through a predetermined course of inflatable pylons situated on anchored barges and positioned in certain portions of San Diego Bay. The COTP San Diego has determined that potential hazards associated with the air race event would be a safety concern for anyone intending to operate on certain waters of San Diego Bay.

The purpose of this rulemaking is to ensure the safety of event participants, spectators and transiting vessels on the navigable waters of San Diego Bay before, during, and after the scheduled event. 33 U.S.C. 1233, authorizes the Coast Guard to establish and define special local regulations to promote the safety of life on navigable waters.

##### IV. Discussion of the Rule

In this temporary final rule, the regulations in 33 CFR 100.1101 will be temporarily inserted for Table 1, Item 19 of that section in order to reflect that the special local regulation will be effective and enforced from April 14, 2017, from 8:00 a.m. to 6:30 p.m., from April 15, 2017 from 10:00 a.m. to 6:00 p.m., and from April 16, 2017 from 10:00 a.m. to 4:30 p.m. This addition is needed to ensure that adequate regulations are in place to protect the safety vessels and individuals that may be present in the regulated area. No other portion of Table 1 of § 100.1101 or other provisions in § 100.1101 shall be affected by this regulation.

The special local regulations are necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the San Diego Bay waterway. Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the event times. Additionally, the Patrol Commander (PATCOM) will control the movement of all vessels within the regulated area and will restrict vessels from entering the regulated area. Before the effective period, the Coast Guard will publish information on the event in the weekly LNM. The regulatory text appears at the end of this document.

##### V. Regulatory Analysis

We developed this rule after considering numerous statutes and Executive orders related to rulemaking.

Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### A. Regulatory Planning and Review

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. The Coast Guard will publish a LNM, issue a BNM via VHF–FM marine channel 16 that details the vessel restrictions of the regulated area, and distribute a special local regulation flyer for public use.

##### B. Impact on Small Entities

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

605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of San Diego Bay, CA, from April 14, 2017, from 8:00 a.m. to 6:30 p.m., from April 15, 2017 from 10:00 a.m. to 6:00 p.m., and from April 16, 2017 from 10:00 a.m. to 4:30 p.m.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic will be allowed to pass through the area with permission of the COTP, or his designated representative, during a predefined schedule arranged by the event sponsor, and the special local regulation is limited in size and duration. The Coast Guard will issue maritime advisories widely available to all waterway users. Before the effective period, the Coast Guard will publish event information on the internet in the weekly LNM marine information report. 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 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 rule or any policy or action of the Coast Guard.

**C. Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**D. Federalism and Indian Tribal Government**

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. We have analyzed this rule under that Order and determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this 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 rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

**E. Unfunded Mandates Reform Act**

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

**F. Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of marine event special local regulations on the navigable waters of San Diego Bay. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this 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.

**List of Subjects in 33 CFR Part 100**

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

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

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

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

**Authority:** 33 U.S.C. 1233.

■ 2. In § 100.1101, at the end of Table 1 to § 100.1101, add item “19” to read as follows:

**§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.**

\* \* \* \* \*

TABLE 1 TO § 100.1101

		*	*	*	*	*
<b>19. Red Bull Air Race—San Diego 2017</b>						
Sponsor .....	Mountain Sports International					
Event Description.	Airplane Race.					
Date .....	April 14, 2017 through April 16, 2017.					
Location .....	San Diego Bay, CA.					
Regulated Area.	The navigable waters of San Diego Bay bound within these coordinates (NAD 83):					
	32°42'41" N., 117°10'33" W.					
	32°42'14" N., 117°10'50" W.					
	32°41'37" N., 117°09'51" W.					
	32°41'56" N., 117°09'29" W.					

Dated: March 29, 2017.

**J.R. Buzzella,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2017–07517 Filed 4–12–17; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG–2017–0091]

**Safety Zone; Monongahela 4th of July Celebration, Monongahela River Miles 32.0 to 33.0, Monongahela, PA****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the subject safety zone for the Monongahela Area Chamber of Commerce's Monongahela 4th of July Celebration on the Monongahela River, from mile marker (MM) 32.0 to MM 33.0, extending the entire width of the river. The zone is needed to protect vessels transiting the area and event spectators from the hazards associated with the Celebration's land-based firework display. During the enforcement period, entry into, transiting, or anchoring in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port Pittsburgh (COTP) or a designated representative.

**DATES:** The regulations in 33 CFR 165.801 Table 1, Sector Ohio Valley, No. 46 will be enforced from 9:15 p.m. until 11 p.m., on July 4, 2017 with a rain date of July 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email [Jennifer.L.Haggins@uscg.mil](mailto:Jennifer.L.Haggins@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone for the Monongahela Area Chamber of Commerce's Monongahela 4th of July Celebration on the Monongahela River, listed in 33 CFR 165.801 Table 1, Sector Ohio Valley, No. 46 from 9:15 p.m. to 11 p.m. on July 4, 2017 with a rain date of July 5, 2017. Entry into the safety zone is prohibited unless authorized by the COTP or a designated representative. Persons or vessels desiring to enter into or passage through the safety zone must request permission from the COTP or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.801 and

5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and updates via Marine Information Broadcasts.

Dated: March 21, 2017.

**L. McClain, Jr.,**

*Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.*

[FR Doc. 2017–07516 Filed 4–12–17; 8:45 am]

**BILLING CODE 9110–04–P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 64**

[CG Docket Nos. 10–51 and 03–123; FCC 17–26]

**Structure and Practices of the Video Relay Services Program****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission takes steps to further improve the quality of video relay service (VRS) by authorizing skills-based routing and deaf-interpreter trials, directing the publication of speed-of-answer data, permitting assignment of ten-digit telephone numbers to hearing persons for point-to-point video communication in sign language with VRS users, and authorizing a pilot program in which some VRS calls are interpreted by communications assistants (CAs) at home workstations.

**DATES:** *Effective dates:* Effective May 15, 2017, except for § 64.604(b)(8) and amendments to §§ 64.604(b)(4)(iii), 64.611, 64.615, 64.630, 64.5101, and 64.5103 of the Commission's rules, which contain modified information collection requirements that have not yet been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission will publish a document in the **Federal Register** announcing the effective date of those amendments.

*Applicability dates:* The skills-based routing and deaf-interpreter trials will commence on August 1, 2017, and terminate March 31, 2018. The pilot program for at-home VRS call handling will commence on November 1, 2017, and end on November 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Bob Aldrich, Consumer and Governmental Affairs Bureau (202) 418–0996, email [Robert.Aldrich@fcc.gov](mailto:Robert.Aldrich@fcc.gov), or Eliot Greenwald, Consumer and

Governmental Affairs Bureau, (202) 418–2235, email [Eliot.Greenwald@fcc.gov](mailto:Eliot.Greenwald@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, document FCC 17–26, adopted on March 23, 2017, and released on March 23, 2017, in CG Docket Nos. 10–51 and 03–123. The Notice of Inquiry and Further Notice of Proposed Rulemaking, FCC 17–26, adopted on March 23, 2017, and released on March 23, 2017, was published in an earlier issue, and the Order, FCC 17–26, adopted on March 23, 2017, and released on March 23, 2017, will be published in a later issue. The full text of document FCC 17–26 will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (844) 432–2272 (videophone), or (202) 418–0432 (TTY).

**Congressional Review Act**

The Commission will send a copy of document FCC 17–26 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**Final Paperwork Reduction Act of 1995 Analysis**

The Report and Order in document FCC 17–26 contains modified information collection requirements, which are not applicable until approval is obtained from OMB. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 17–26 as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. The Commission will publish a separate document in the **Federal Register** announcing approval of the information collection requirements contained in the document FCC 17–26 Report and Order. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might “further reduce the information burden for small business concerns with fewer

than 25 employees.” *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, published at 78 FR 40407, July 5, 2013 (*2013 VRS Reform Order FNPRM*); *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, published at 80 FR 72029, November 18, 2015 (*2015 VRS FNPRM*).

## Synopsis

### *Trial of Skills-Based Routing*

1. The Commission authorizes a voluntary trial of skills-based routing by any of the currently certified VRS providers, for calls pertaining to legal, medical, and technical computer support, to be conducted for a period of eight months under the conditions set forth below. There are currently five companies with Commission certification to receive compensation from the Interstate Telecommunications Relay Services Fund (TRS Fund) for providing VRS. The Commission may authorize additional VRS providers to participate in the trial in the event that any new providers apply for and are granted certification before the end of the trial.

2. The Commission is persuaded that enabling consumers to have conversations relayed by interpreters skilled in the vocabulary of these subjects can contribute to achieving functional equivalence in accordance with the goals of 47 U.S.C. 225. The Commission believes that skills-based routing may increase the efficiency of VRS by reducing the duration of calls and the need for duplicative calls. Additionally, the Commission believes it can facilitate compliance with each provider’s obligation to ensure that its CAs can interpret effectively and accurately, both receptively and expressively, using any necessary specialized vocabulary.

3. Consumer groups identify the three skills listed above as those most commonly needed. The Commission will limit the trial to these three categories, in order to provide relatively clear-cut criteria for the types of calls that qualify, to maximize the usefulness of the data to be collected, and to provide a circumscribed test case to help the Commission identify and address issues if skills-based routing is permitted on a permanent basis. VRS providers participating in the trial may

offer one, two, or all three types of specialized interpretation. Permitting a voluntary trial will allow VRS providers to individually determine whether and how extensively to participate, depending on how skills-based routing fits into their respective budgets and business plans. The Commission further expects that an eight-month period will be sufficient to gather data on the costs and benefits of skills-based routing and to enable the Commission to develop informed rules and policies governing this feature if it is later authorized on a permanent basis.

4. To allow sufficient time for the design of each provider’s individual trial, the Commission directs that the formal trial period commence August 1, 2017, and terminate March 31, 2018. Providers interested in participating in the trial must provide notification of their intent to participate to the Commission’s Consumer and Governmental Affairs Bureau (CGB) by June 1, 2017, including a description of the standards they will use to determine whether a particular CA may handle each type of skills-based call. Such notification may be sent by email to [TRSreports@fcc.gov](mailto:TRSreports@fcc.gov). The Commission declines at this time to restrict the trial to a specified number of consumers because selecting a limited subset of customers could pose technical issues and be perceived as unfair to those customers not selected. In addition, larger-scale trials will provide the Commission with more data to aid in the Commission’s assessment of a skills-based routing feature. The results of a trial in which each provider determines the scale of its participation may also provide information about the competitive aspects of offering this feature to inform future Commission decisions about how to structure skills-based routing in the future.

5. For the duration of the trial, all participating VRS providers will continue to be compensated at the applicable rate for compensable minutes of use whether handled by a generalist or specialist CA.

6. *Rule Waivers*. To enable the Commission to gather data on the costs and benefits of skills-based routing and develop informed rules governing this practice should it be authorized in the future, the Commission conditionally waives, for the duration of the trial, (1) the requirement to answer calls in the order received, (2) the speed-of-answer rule, (3) the ten-minute rule, and (4) the sequential call rule. With these waivers, calls routed to specialized interpreters will qualify for per-call compensation from the Fund, provided that such calls are handled in accordance with the

conditions below and all non-waived mandatory minimum standards.

7. *Answer-in-the-Order Received Waiver*. For purposes of this eight-month trial, a limited waiver of the requirement to answer calls in the order received under the conditions described herein is necessary to enable VRS users to effectively benefit from the availability of skills-based CAs. Waiver of this rule will allow providers, to the extent technically feasible, to give VRS users the option of selecting a specialist CA at various points in the course of processing a call, e.g., prior to initially being connected to the VRS provider, during the call set-up with the CA, or after all parties to the call have been connected—even if this entails providing a specialized CA out of the order that calls seeking other types of specialized CAs are received. However, the “answer-in-the-order” rule will still apply within each subset of CA expertise, so that if two individuals both request the same type of specialized interpreting, each of their requests must be addressed in the order received. Nor do we waive the related prohibitions disallowing advance reservations and “call back” arrangements for VRS. Moreover, the Commission does not authorize VRS providers or users to treat skills-based routing of VRS calls as a substitute for in-person or video remote interpreting when medical, legal, and computer professionals need to communicate in person with their patients and clients.

8. *Speed-of-Answer Waiver*. The Commission waives the speed-of-answer rule, which requires that 80 percent of all VRS calls be answered within 120 seconds, measured monthly, for calls routed to specialized interpreters during the eight-month duration of the skills-based routing trial. The Commission will permit providers to give callers wait-time estimates for the provider’s skills-based and generalist queues, in addition to offering callers the option of switching out of a skills-based routing queue and into the generalist queue if the caller decides that the wait for a specialized CA is too long.

9. *Ten Minute Rule Waiver*. To enable providers to reserve interpreters who have specialized skills for those individuals who need them, the Commission waives the requirement that the CA remain on the call for a minimum of ten minutes for trial participants in the circumstances described herein. If it becomes apparent during a call that specialized interpretation is not needed, the call may be transferred back to a generalist CA (or the generalist queue) after (1) receiving confirmation from a

supervisor that a specialist CA is unnecessary and (2) notifying the caller of the impending transfer. Doing so will allow VRS providers to preserve the scarce resources of specialist CAs and best match the unique skills of these individuals to the callers that need them.

10. *Sequential Call Rule Waiver.* The Commission waives the sequential call rule, which prohibits CAs from refusing to handle multiple calls in a row from the same caller, in those instances in which, following a specialist call, a consumer asks the CA to place a second call that requires no specialist handling. Waiving this rule in these particular circumstances will help ensure that CAs skilled in medical, legal, or technical terminology remain available for callers in need of such skills to achieve effective communication.

11. *Data Collection.* To evaluate the demand for and the costs and benefits of skills-based routing, the Commission requires each participating provider to submit to the Fund Administrator, with their monthly requests for compensation, the following data for each month of the trial, disaggregated by each of the three skill set categories:

- The number of CAs available for specialist interpreting and the total number of hours per week that all such CAs were assigned to such function (*i.e.*, total hours in which they were actively engaged in specialist interpreting plus total downtime associated with such interpreting);
- The percentage of active telephone numbers on the American Sign Language (ASL) side and the voice side of calls, respectively, for which a specialist interpreter was used for at least one call;
- The numbers of compensable calls and conversation minutes handled by specialist interpreters;
- Identification within monthly call detail reports (CDRs) of those calls routed or transferred to or from specialized CAs;
- For each call sent to a specialist interpreter or queue, the amount of time that elapsed between a request for a specialist interpreter and the time the interpreter joined the call—*i.e.*, the speed of answering the caller's request; and
- The number of calls for which a specialist interpreter was requested but not provided.

12. The Commission also requires participants to submit, no later than June 1, 2018, a final report on the trial containing the following information, disaggregated by skill set where indicated:

- A description of the standards used to determine (1) whether a specialist interpreter was needed on a call and (2) whether a particular CA was qualified for assignment as a specialist interpreter;

- Detailed documentation of incremental costs incurred in conducting the trial, including any incremental costs associated with CA recruitment, training, and compensation, engineering and technical implementation, marketing, and administrative and management support (including oversight, evaluation, and recordkeeping);

- For providers choosing to notify callers of wait-time estimates, data on such waiting periods, as well as feedback on the benefits and disadvantages of offering this feature; and

- The percentage of requests for specialized interpreting by individuals with disabilities as compared to requests made by hearing individuals.

13. Consideration of whether to allow skills-based routing on a permanent basis also would benefit from the submission by participating providers of studies designed for objective assessment of whether and by how much the accuracy of interpreting improves when calls involving medical, legal, and computer support matters are subject to skills-based routing, with full documentation of the standards and measurement methods used.

14. The Commission requires providers to make all data collected in the trial available upon request to the TRS Fund administrator and the Commission staff. The TRS Fund administrator or the Commission may release the results of the trial in an aggregated or anonymized fashion. All personally identifiable user information gathered for the purposes of the trial shall remain confidential pursuant to the Commission's confidentiality rules.

15. The Commission directs the Office of Managing Director (OMD) and the TRS Fund administrator to consult with each of the providers participating in the trial, to formulate their individual data collection strategies—before the beginning of the trial and as needed during the trial—to ensure that the data collected addresses the categories listed above and is robust enough to provide sufficient basis for a Commission decision on whether to permit skills-based routing on a permanent basis, as well as how to address any issues that surface during the trial.

#### *Trial of Deaf Interpreters*

16. Based on the record in this proceeding, for the same eight-month

trial period used for assessing skills-based routing, the Commission conducts a voluntary trial of the provision of deaf interpreters for VRS calls under the conditions set forth below.

17. The Commission is interested in studying whether deaf interpreters improve VRS efficiency and functional equivalency, but presently lacks sufficient information about the demand for, as well as the costs and benefits of, providing deaf interpreters in the VRS setting. The Commission believes that the collection of this and other data over an eight-month period will help inform it about whether and how the provision of such interpreters should be included in allowable costs or otherwise subject to compensation from the TRS Fund.

18. Providers interested in participating in the trial should provide notification of their intent to participate to CGB by June 1, 2017, including a description of the standards they will use to determine whether a deaf interpreter was needed for a call and whether a particular individual is qualified for assignment as a deaf interpreter. Such notification may be sent by email to [TRSreports@fcc.gov](mailto:TRSreports@fcc.gov). Participating providers are requested to submit to the Fund Administrator, with their monthly requests for compensation, the following data for each month of the trial:

- The number of deaf interpreters utilized and the total number of hours for which all such interpreters were employed;
- The percentage of active telephone numbers on the ASL side of a call for which a deaf interpreter was added for at least one call;
- The numbers of compensable calls and conversation minutes in which deaf interpreters participated, broken down, to the extent ascertainable by the CA or provider, by whether such participation was necessary due to the user's (1) age, (2) limited English, (3) limited ASL proficiency, (4) cognitive or motor disability, or (5) other characteristics;
- Identification within monthly CDRs of those calls in which deaf interpreters participated;
- For each call on which a deaf interpreter was used, the amount of time that elapsed between a request for a deaf interpreter and the time a deaf interpreter joined the call—*i.e.*, how quickly the provider responded to the caller's request;
- For each call on which a deaf interpreter was used, the duration of the deaf interpreter's presence on the call; and
- The number of calls for which a deaf interpreter was requested but not provided.

19. The Commission also requests participants to submit, no later than June 1, 2018, a final report on the trial containing the following information, disaggregated by skill set where indicated:

- A description of the standards that were used to determine (1) whether a deaf interpreter was needed for a call and (2) whether a particular individual is qualified for assignment as a deaf interpreter; and
- Detailed documentation of incremental costs incurred in the use of deaf interpreters, including any incremental costs associated with interpreter recruitment, training, and compensation, engineering and technical implementation, marketing, and administrative and management support (including oversight, evaluation and recordkeeping).

20. The Commission believes that these metrics will assist the Commission in determining, among other things, the general availability of and appropriate service quality for deaf interpreters, an appropriate speed of answer, whether participation of deaf interpreters results in more efficient calls—*e.g.*, by shortening the length of calls, and whether additional compensation is needed to support the provision of such interpreters.

21. The Commission expects providers to make all data collected in the trial available upon request to the TRS Fund administrator and the Commission staff. The TRS Fund administrator or the Commission may release the results of the trial in an aggregated or anonymized fashion. All personally identifiable user information gathered for the purposes of the trial will be treated as confidential pursuant to the Commission's confidentiality rules.

22. The Commission directs OMD and the TRS Fund administrator to consult with each of the providers participating in the trial, to formulate their individual data collection strategies—before the beginning of the trial and as needed during the trial—to ensure that the data collected addresses the categories listed above and is robust enough to provide sufficient basis for a Commission decision on whether to incorporate deaf interpreters on a permanent basis, as well as how to address any issues that surface during the trial.

23. VRS providers employing deaf interpreters must comply with all applicable mandatory minimum standards. Because a deaf interpreter does not perform all the functions of a CA, but rather provides supplementary assistance, the participation of a deaf interpreter does not necessarily affect a

provider's speed of answer or compliance with other telecommunications relay services (TRS) rules. Further, the Commission leaves the parameters of participation in the deaf interpreters trial largely to the discretion of individual providers. For the same reasons discussed above regarding skills-based routing, in any instance where a caller requests a deaf interpreter in advance of placing a call and is subject to additional waiting time before the call can be placed, in excess of the time needed for a hearing CA to be available, the Commission waives the answer-in-the-order-received and speed-of-answer rules with respect to such additional waiting time, for those providers that participate in the trial and who provide timely and accurate reports containing the information specified above, on condition that the provider makes clear that there will be an additional wait and expressly offers to proceed without a deaf interpreter.

#### *Speed of Answer*

24. The Commission is persuaded that releasing summaries of each provider's speed-of-answer performance data to the public would be beneficial because it will enable consumers to monitor provider performance and supply valuable information that can assist in their selection of VRS providers. The Commission further believes that in the interest of attracting customers, publication of this data may create incentives for providers to tighten their speed-of-answer performance. Accordingly, the Commission directs OMD, in coordination with CGB, to publish summaries of each VRS provider's speed-of-answer data—obtained from the TRS Fund administrator—on a semi-annual basis on the Commission's Web site. The information published shall not identify individual callers or phone numbers. Notification of the release of such information shall be made by Public Notice. The Commission further directs that such information be prepared for the public in an easy-to-read format, to allow for easy comparisons of provider performance, and that the summaries be accompanied by a statement that the data shown are only averages and do not predict how long it will take for a provider to answer any individual call.

25. Given that VRS users are now able to directly dial their destination number without intervention by a CA, the Commission amends its rules to define when VRS calls are "answered" for the purpose of the speed-of-answer measurement as when a call is answered by a CA—*i.e.*, not when it is put on hold, placed in a queue, or connected to

an interactive voice response (IVR) system. Thus, the current formula for assessing compliance will be amended to explicitly state that the call must be answered by a CA, as follows: [(calls unanswered and disconnected by the caller in 45 seconds or less) + (calls answered by a CA in 45 seconds or less)] divided by [all calls (unanswered and answered)].

26. The Commission declines to adopt a self-executing exemption from the speed-of-answer standard for calls occurring as a result of specific extraordinary events beyond a provider's control. The Commission's mandatory minimum standards require all TRS providers to have "redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use." However, the Commission also recognizes that at times, there may be exigent circumstances that affect either multiple centers at the same time, or a single center in such an extraordinary way that meeting the speed of answer becomes extremely difficult or impossible, and warrant some flexibility by the Commission. Should this occur, providers may bring such circumstances to the attention of the Commission in the form of a waiver request, which shall be reviewed on its merits on a case-by-case basis. The waiver request shall include a description of the nature of the exigent circumstances, a discussion of what the provider is doing to mitigate the effects of such circumstances, and the average speed-of-answer calculations for the period covered by the waiver request. To ensure that any delay in addressing such requests does not unnecessarily disrupt the provision of compensation, the Commission amends its rules to instruct the TRS Fund administrator not to withhold payment pending review of such waiver requests.

#### *iTRS Numbers for Hearing People*

27. The Commission believes that enabling registered VRS users to communicate directly with hearing individuals who can sign not only will conserve the resources of the TRS Fund but also will allow "more natural, efficient, and effective communication" between the deaf and hearing communities. Accordingly, the Commission amends the TRS rules to permit VRS providers to assign ten-digit telephone numbers associated with the TRS Numbering Directory (iTRS numbers) to hearing individuals upon their request, in accordance with the rules adopted herein. VRS providers shall allow such iTRS numbers to be

used only for point-to-point video communications and shall not allow them to be used to place or receive VRS calls. Accordingly, it will not be permissible for these numbers to be used for the purpose of contacting 911 services. In order to ensure that there is no such expectation by iTRS number recipients who are hearing, the Commission directs providers who distribute such numbers to provide a clear warning about this limitation.

28. Because the Commission is only permitting, and does not require, VRS providers to assign iTRS numbers to hearing individuals, and because such numbers may not be used to access TRS, the Commission will not permit any costs associated with such number assignment to be included as allowable costs in provider cost data submissions to the TRS Fund administrator at this time. Thus, in VRS providers' annual cost submissions, any incremental costs for number assignment, back-office services, and the like associated with providing iTRS numbers and connectivity to hearing individuals shall be separated from any allowable costs associated with number assignment and point-to-point communications for registered VRS users. Such costs may be recovered from the individuals to whom such numbers are assigned.

29. To aid in the prevention of fraud, waste, and abuse, and to ensure that only residents of the United States have access to point-to-point service via iTRS numbers, the Commission requires that VRS providers obtain from each hearing applicant seeking an iTRS number the individual's full name, residential address, birth date, and a signed self-certification that:

- The individual is proficient in sign language;
- The individual understands that the iTRS number may only be used for the sole purpose of communicating—via point-to-point—over distances with registered VRS users;
- The individual understands that such iTRS number may not be used to access VRS; and
- The individual understands that calls to 911 are not supported by such iTRS number.

30. In addition to transmitting the above information, the Commission requires each VRS provider to deliver the following to the TRS User Registration Database (TRS-URD) administrator:

- Each iTRS number assigned in the TRS Numbering Directory to hearing persons;
- The VRS provider's name and dates of service initiation and termination (as applicable); and

- The date on which an iTRS number was assigned to or removed from a hearing person.

31. To ensure that restrictions on the use of these numbers can be implemented and enforced, the Commission requires each default provider distributing an iTRS number to a hearing individual to notify both the TRS Numbering Directory and the TRS-URD that the individual is a hearing person who is not entitled to place or receive VRS calls. Such numbers shall be coded in the TRS-URD and TRS Numbering Directory as restricted numbers that may only be used for point-to-point calls. VRS providers are prohibited from seeking compensation for any call involving an iTRS number assigned to a hearing individual.

32. The Commission requires providers to make all information collected to address the above requirements available upon request to the TRS Fund administrator and the Commission staff. All personally identifiable user information gathered for this purpose shall remain confidential pursuant to the Commission's confidentiality rules.

#### *At-Home VRS Call Handling*

33. The Commission amends its rules to authorize a voluntary pilot program of at-home VRS call handling, subject to specified safeguards, for a twelve-month period, beginning November 1, 2017, and ending November 1, 2018. During this period, in any month of the program, a participating VRS provider may be compensated for minutes served by at-home CA workstations up to a maximum of *either* 30 percent of a VRS provider's total minutes for which compensation is paid in that month *or* 30 percent of the provider's average monthly minutes for the 12 months ending October 31, 2017, whichever is greater. This is a limitation on the minutes handled at-home that will be subject to compensation; however, exceeding this limit during the pilot program period will not result in penalties and forfeitures. The Commission will gather data as the pilot proceeds, to inform a final determination on whether to make this program permanent. The Commission will permit any of the currently certified VRS providers to participate in this pilot, subject to Commission approval of their plans for participation and the conditions specified below.

34. The Commission believes that with current technology and experienced CAs, VRS providers likely can protect against waste, fraud, and abuse, and comply with the Commission's mandatory minimum

standards while effectively handling VRS calls from CA at-home workstations. This approach aligns with current practices across industry and government sectors that permit at-home communications-related work under strict confidentiality standards. CA workstations, whether located in a call center or at home, can be integrated in a virtual system in which call handling protocols apply seamless capabilities and failover procedures to ensure that quality standards are met at every workstation regardless of its location.

35. *Safeguards for At-Home Workstations.* To protect against waste, fraud, and abuse, guarantee call confidentiality, and ensure compliance with the Commission's rules and orders governing TRS, during the trial the Commission requires VRS providers to adhere to the following safeguards for all of their at-home CA workstations. The Commission also expects these providers to respond as quickly as they are able to any indications that their at-home CAs or workstations may not be meeting these safeguards or any of the Commission's TRS standards.

36. *Personnel Safeguards.* Providers must ensure that CAs working from at-home workstations have the skills, experience, and knowledge to effectively handle the wide range of communications that take place over VRS. To achieve this, the Commission requires participating VRS providers to comply with the following safeguards:

- Before permitting CAs to handle calls from an at-home workstation, VRS providers must ensure that they have a level of experience, skills, and knowledge to effectively interpret from these workstations, including a thorough understanding of the Commission's mandatory minimum standards. This can be measured, for example, by having providers conduct tests or assessments of a CA's capabilities and knowledge prior to permitting participation in the program.

- To provide a measure of added assurance that CAs working at home have sufficient experience, skills, and knowledge to work without in-person supervision, any CA permitted to work at home first must have three years of experience as a call center CA.

- Before authorizing at-home workstations, VRS providers must establish protocols for the handling of calls from these stations (to the extent there are additional protocols that differ from those applicable to the provider's call centers) and must provide training to at-home CAs on such protocols, in addition to all applicable training that is required of CAs working from call centers.

- Before being permitted to work at home, CAs must certify to the provider in writing their understanding of and commitment to complying with the Commission's rules governing TRS, including rules governing caller confidentiality and fraud prevention.

- VRS providers must provide CAs working from at-home workstations equivalent support to that provided to their counterparts working from call centers, as needed to effectively handle calls, including, where appropriate, the opportunity to team interpret and consult with supervisors. Supervisors located at call centers must be readily available to CAs working from home to resolve problems that may arise during a relay call, such as difficulty in understanding a VRS user's signs, the need for added support for emergency calls, and relieving a CA in the event of the CA's sudden illness.

- Each provider shall establish grounds for dismissing a CA from the at-home program (*i.e.*, for noncompliance with the Commission's at-home call handling safeguards and rules governing TRS), including a process for such termination in the event that the CA fails to adhere to these requirements. Such grounds and process must be put in writing and provided to each CA participating in the pilot program. CAs must certify as to their understanding of the reasons and process for such dismissal.

37. *Technical and Environmental Safeguards.* The home environment used to handle VRS calls must meet certain standards to ensure the provision of confidential and uninterrupted services to the same extent as the provider's call center. VRS providers must also ensure that at-home CAs are seamlessly integrated into their call routing, distribution, tracking, and support systems. This will help ensure that VRS providers have the same level of oversight over an at-home CA workstation as a CA workstation in a call center. To achieve this and to ensure compliance with the Commission's minimum standards, the Commission requires the following safeguards:

- Each at-home workstation shall reside in a separate, secure location in the CA's home, where access is restricted solely to the CA.

- Each at-home workstation shall allow a CA to use all call-handling technology to the same extent as other CAs, including the ability to transition a non-emergency call to an emergency call, engage in virtual teaming with another CA, and allow supervisors to communicate with and oversee calls.

- VRS providers shall ensure that each at-home workstation is capable of supporting VRS in compliance with the Commission's mandatory minimum technical and emergency call handling standards, including the provision of system redundancy, and other safeguards to the same degree as these are available at call centers, and including the ability to route VRS calls around individual CA workstations in the event they experience a network outage or other service interruption.

- Each at-home workstation shall be equipped with an effective means to prevent eavesdropping, such as white noise emitters or soundproofing, and to ensure that interruptions from noises outside the room do not adversely affect a CA's ability to interpret a call accurately and effectively.

- Each CA workstation must connect to the provider's network over a secure connection to ensure caller privacy.

38. *Monitoring and Oversight Obligations.* The Commission requires the following additional measures in order to appropriately monitor and oversee the at-home call handling pilot program:

- To ensure CA compliance with the enumerated safeguards, VRS providers shall inspect and approve each at-home workstation before activating a CA's workstation for use.

- The VRS provider shall assign a unique call center identification number (ID) to each VRS at-home workstation and use this call center ID to identify all minutes handled from each such workstation in its call detail records submitted monthly to the TRS Fund administrator.

- Each at-home workstation shall be equipped with monitoring technology sufficient to ensure that off-site supervision approximates the level of supervision at the provider's call center, including the ability to monitor both ends of a call, *i.e.*, video and audio, to the same extent as is possible in a call center. Although the Commission does not dictate the form of such monitoring, the Commission notes that commenters suggest an external camera with a view of the CA's workspace and tracking software that is capable of recording CA actions and producing reports that can be analyzed for anomalies. To the extent that this method is used, providers shall regularly analyze such data to proactively address possible waste, fraud, and abuse.

- Each provider shall keep all records pertaining to at-home work stations, including the data produced by any at-home workstation monitoring technology, except for any data that records the content of an interpreted

conversation, for a minimum of three years. At-home workstations and workstation records shall be subject to review, audit, and inspection by the Commission and the Fund administrator to the same extent as data produced from other call centers subject to the Commission's rules.

- Each provider must conduct random and unannounced inspections of at least five percent (5%) of all at-home workstations during the pilot program and report its findings as specified below. In addition, each at-home work environment may be subject to unannounced on-site inspections by the Commission.

- Each at-home workstation will be subject to audits to the same extent as other call centers subject to the Commission's rules.

39. *Participation in the Pilot Program.*

Each currently certified VRS provider interested in participating in the pilot program must provide notification to the Commission of its intent to participate to CGB by September 1, 2017, together with a detailed plan of how it intends to achieve compliance with the Commission's safeguards enumerated above and standards governing VRS. Per the safeguards noted above, in these plans VRS providers shall specify the following:

- A description of the screening process used to select CAs for the at-home call handling program;

- A description of specific training to be provided for at-home CAs;

- A description of the protocols and CA expectations developed for the at-home call handling program;

- A description of the grounds for dismissing a CA from the at-home program and the process for such termination in the event that the CA fails to adhere to applicable requirements;

- A description of all steps that will be taken to install a workstation in a CA's home, including evaluations that will be performed to ensure all workstations are sufficiently secure and equipped to prevent eavesdropping and outside interruptions;

- A description of the monitoring technology to be used by the provider to ensure that off-site supervision approximates the level of supervision at the provider's call center;

- An explanation of how the provider's workstations will connect to the provider's network, including how they will be integrated into the call center routing, distribution, tracking, and support systems, and how the provider will ensure system redundancy in the event of service disruptions in at-home workstations;

- A signed certification by an officer of the provider that the provider will conduct random and unannounced inspections of at least five percent (5%) of all at-home workstations during the pilot program; and

- The provider's commitment to comply with all other safeguards enumerated above and Commission rules governing TRS.

40. CGB, in consultation with OMD, will approve plans that demonstrate that the provider will fully comply with the Commission's standards and safeguards. Such approval may be canceled if the provider falls out of such compliance at any time. In addition, providers may be subject to withholding, forfeitures, and penalties for noncompliant minutes handled by at-home workstations, as is the case for non-compliant minutes handled by call centers.

41. *Data Collection.* Participating providers will be required to submit to the TRS Fund administrator, with their monthly requests for compensation for minutes handled from both call centers and at-home workstations, the following data for each month of the pilot program:

- The call center ID and full street address (number, street, city, state, and zip code) for each at-home workstation and the CA ID number for each individual handling VRS calls from that workstation; and

- The location and call center IDs of call centers providing supervision for at-home workstations, plus the names of persons at such call centers responsible for oversight of these workstations.

42. In addition to these monthly reports, the Commission requires participants to submit, no later than seven months after the start of the program, a report covering the first six months of their individual pilot programs containing the following information:

- A description of the actual screening process used to select CAs for the at-home call handling program;

- Copies of training materials provided to at-home CAs;

- Copies of written protocols used for CAs working from home;

- The total number of CAs handling VRS calls from at-home workstations over the first six months of the program;

- The number of 911 calls handled by the provider's at-home workstations;

- A description and copies of any surveys or evaluations taken of CAs concerning their experience using at-home workstations and participating in an at-home call handling program;

- The total number of CAs terminated from the program;

- The total number of complaints, if any, submitted to the provider regarding its at-home call handling program or calls handled by at-home CAs;

- The total number of on-site inspections of at-home workstations conducted, along with the dates and locations of such inspections;

- A description of the monitoring technology used to monitor CAs working at home and an analysis of the experience of supervisors overseeing at-home CAs compared to overseeing CAs in a call center;

- Copies of any reports produced by tracking software and a description explaining how the provider analyzed the reports for anomalies; and

- Detailed documentation of costs incurred in the use of at-home workstations, including any costs associated with CA recruitment, training and compensation, engineering and technical set-up (including workstation set-up), and administrative and management support (including oversight, evaluation, and recording).

43. In light of these information reporting requirements, during the pilot program the Commission does not require VRS providers to include redundant data pertaining to at-home call handling workstations in semi-annual call center reports and in call center change notifications under the Commission's existing rules. *See* 47 CFR 64.604(c)(5)(iii)(N)(2).

44. The Commission acknowledges the concerns of some commenters about the costs that may be associated with safeguards required for at-home call handling. However, the Commission's action today authorizes, rather than mandates, participation in the at-home pilot program. Accordingly, each VRS provider has the opportunity to assess for itself whether the costs of implementing this practice—and the requisite safeguards—outweigh its benefits. Additionally, the Commission believes that there may be some cost savings associated with implementing at-home interpreting. The Commission is hopeful that the data it collects during the pilot program will test the accuracy of this assumption and provide comprehensive information about the costs and benefits of allowing at-home workstations. The Commission concludes that if implemented with safeguards, the benefits of a pilot at-home interpretation program may outweigh its costs and warrant lifting the prohibition against this feature for a one-year period. The Commission will evaluate the value and effectiveness of this program at the conclusion of this period to make a determination on its continuation.

*Legal Authority for Trials of Skills-Based Routing and Deaf Interpreters, and Pilot Program for At-Home Interpreting*

45. The Commission concludes it has authority under 47 U.S.C. 225 to conduct trials of skills-based routing and the use of deaf interpreters, and to establish a pilot program for at-home interpreting. Section 225 of the Act defines TRS as services that enable individuals with hearing and speech disabilities to engage in communication in a manner that is functionally equivalent to voice communications service, directs the Commission to ensure that such services are available to the extent possible and the most efficient manner, and authorizes the Commission to prescribe regulations to implement section 225 of the Act, including functional requirements, guidelines, operational procedures, and minimum standards. 47 U.S.C. 225(a)(3), (b)(1), (d)(1), (d)(1)(A), (B). The record indicates that the use of skills-based routing, deaf interpreters, and at-home interpreting may improve the functional equivalence and efficiency of VRS. The data gathered from these trials and pilot program will enable the Commission to more fully assess these benefits as well as any additional costs resulting from such practices.

#### **Final Regulatory Flexibility Analysis**

46. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into each of the Further Notices of Proposed Rulemaking. The Commission sought written public comment on the proposals in the *2013 VRS FNPRM* and the *2015 VRS FNPRM*, including comment on the two IRFAs. No comments were received on either IRFA.

#### **Need for, and Objectives of, the Proposed Rules**

47. Document FCC 17–26 makes rule changes to improve the functional equivalence of VRS by approving, pursuant to Commission authority under 47 U.S.C. 225, eight-month trials for: (a) skills-based routing by which VRS calls can be routed to a CA who specializes in legal, medical or technical terminology; and (b) the use of deaf interpreters who work in conjunction with hearing interpreters in special situations, such as when a caller has limited signing ability. Document FCC 17–26 also: (a) Modifies the formula for calculating the speed of answer so that the measured wait time does not end

until the call is answered by a CA—*i.e.*, not when the call is put on hold, placed in a queue, or connected to an IVR system; (b) permits the assignment of iTRS numbers to hearing individuals who know ASL to communicate directly with VRS users through point-to-point video service without the use of a CA; and (c) authorizes, pursuant to Commission authority under 47 U.S.C. 225, a twelve-month pilot program for at-home VRS call handling, subject to requirements, including training, having secure workstations in a separate room, monitoring, and reporting to the Commission on the number of CAs working from home, their locations, and the minutes of use, which are necessary to protect to the privacy of VRS users and prevent waste, fraud, and abuse.

#### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

48. No comments were filed in response to either IRFA.

#### Small Entities Impacted

49. The rules adopted in document FCC 17–26 will affect obligations of VRS Providers. These services can be included within the broad economic category of All Other Telecommunications. Five providers currently receive compensation from the TRS Fund for providing VRS: ASL Services Holdings, LLC; CSDVRS, LLC; Convo Communications, LLC; Purple Communications, Inc.; and Sorenson Communications, Inc.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

50. The two trials—for skills-based routing and deaf interpreters—are voluntary. There are some recordkeeping, reporting and other compliance requirements associated with the trials, but those requirements apply only if a VRS provider decides to engage in a trial.

51. The long-term rules adopted in the document FCC 17–26 have minor compliance requirements. First, the modification for measuring the speed-of-answer only requires VRS providers to make minor adjustments to their automated methods of keeping records of how fast calls are answered. Second, the assignment of iTRS numbers to hearing individuals who can sign is essentially an extension of the VRS providers' existing obligation to collect and maintain the required data to facilitate the assignment and usage of such numbers by VRS callers and to prevent waste, fraud, and abuse. Finally, although document FCC 17–26 includes

regulatory requirements associated with a pilot program for at-home VRS call handling, including training, having secure workstations in a separate room, monitoring, and reporting to the Commission on the number of CAs working from home, their locations, and the minutes of use, such requirements are necessary to protect the privacy of users and prevent waste, fraud, and abuse.

#### Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

52. The skills-based routing trial and the trial of deaf interpreters are voluntary, thereby minimizing the potential recordkeeping, reporting, and compliance requirements. Even for VRS providers that choose to participate in the trials, the VRS providers will be designing their own trials; therefore, they will control the sizes of their trials and the corresponding compliance impacts. Moreover, the proposal for a skills-based routing trial was initially made jointly by all of the VRS providers in 2015, and many of the reporting requirements for both trials have been suggested by the smaller VRS providers.

53. The new rules concerning speed of answer evolved from a proposal to increase the speed-of-answer requirement. To address concerns raised by the VRS providers of having to comply with an increased speed of answer without receiving corresponding increases in their compensation, the Commission decided not to change the speed of answer at this time. The small change in the methodology for calculating speed-of-answer will have minimal impact on the VRS providers.

54. The authorization to provide iTRS numbers to hearing individuals will have similar proportional impact on large and small VRS providers. The data gathering and recordkeeping associated with the provision of such numbers is basically an extension of the VRS providers' current roles in providing iTRS numbers to VRS users. The costs of number assignments, back-office services, and the like shall be handled in the same manner as comparable cost functions performed in connection with number assignment and point-to-point communications for registered VRS users.

55. The regulatory requirements associated with the pilot program for at-home VRS call handling, including training, having secure workstations in a separate room, monitoring, and reporting to the Commission on the number of CAs working from home, their locations, and the minutes of use, are necessary to protect the privacy of

users and prevent waste, fraud, and abuse. The VRS providers will be in control of the number of such CAs working at home, and a VRS provider can decide not to allow any CAs to work at home. The costs of setting up the necessary workstations and the associated training, monitoring, reporting, etc. shall be handled in a manner similar to comparable functions performed at the VRS providers' call centers.

56. No commenters raised other alternatives that would lessen the impact of any of these requirements on small entities vis-à-vis larger entities.

#### Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

57. None.

#### Ordering Clauses

Pursuant to sections 1, 2, 225, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225, 251, document FCC 17–26 *is adopted*, and part 64 of title 47 *is amended*.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 17–26, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telecommunications relay services, Video relay services.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

#### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

**Authority:** 47 U.S.C. 154, 225, 254(k), 403(b)(2)(B), (c), 715, Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.601 by adding paragraphs (a)(47) through (49) to read as follows:

**§ 64.601 Definitions and provisions of general applicability.**

(a) \* \* \*

(47) *Hearing point-to-point video user.* A hearing individual who has been assigned a ten-digit NANP number that is entered in the TRS Numbering Directory to access point-to-point service.

(48) *Point-to-point video service.* A service that enables a user to place and receive non-relay video calls without the assistance of a CA.

(49) *Point-to-point video call.* A call placed via a point-to-point video service.

\* \* \* \* \*

■ 3. Amend § 64.604 by revising paragraphs (b)(2)(iii)(B) and (b)(4)(iii) and adding paragraphs (b)(8) and (c)(5)(iii)(L)(6) to read as follows:

**§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(B) VRS CA service providers must meet the speed of answer requirements for VRS providers as measured from the time a VRS call reaches facilities operated by the VRS CA service provider to the time when the call is answered by a CA—*i.e.*, not when the call is put on hold, placed in a queue, or connected to an IVR system.

\* \* \* \* \*

(4) \* \* \*

(iii) A VRS CA may not handle VRS calls from a location primarily used as his or her home unless as part of the voluntary at-home VRS call handling pilot program as provided for by paragraph (b)(8) of this section.

\* \* \* \* \*

(8) *Voluntary at-home VRS call handling pilot program.* Any VRS provider that holds a conditional or full certification to receive compensation from the TRS Fund pursuant to § 64.606 as of March 23, 2017 may participate in the voluntary at-home VRS call handling pilot program. The pilot program shall be in effect for one year, for service provided by participants beginning November 1, 2017, and ending October 31, 2018.

(i) *Notification of intent to participate.* A VRS provider seeking to participate in the pilot program shall notify the Commission of its intent to participate on or before September 1, 2017, and shall include in such notification a detailed plan demonstrating that the VRS provider intends to achieve compliance with the mandatory minimum standards applicable to VRS and with the safeguards enumerated in

this paragraph (b)(8). Plans submitted by VRS providers shall specify the following:

(A) A description of the screening process used to select CAs for the at-home call handling program;

(B) A description of specific training to be provided for at-home CAs;

(C) A description of the protocols and CA expectations developed for the at-home call handling program;

(D) A description of the grounds for dismissing a CA from the at-home program and the process for such termination in the event that the CA fails to adhere to applicable requirements;

(E) A description of all steps that will be taken to install a workstation at a CA's home, including evaluations that will be performed to ensure all workstations are sufficiently secure and equipped to prevent eavesdropping and outside interruptions;

(F) A description of the monitoring technology to be used by the provider to ensure that off-site supervision approximates the level of supervision at the provider's call center;

(G) An explanation of how the provider's workstations will connect to the provider's network, including how they will be integrated into the call center routing, distribution, tracking, and support systems, and how the provider will ensure system redundancy in the event of service disruptions in at-home workstations;

(H) A signed certification by an officer of the provider that the provider will conduct random and unannounced inspections of at least five percent (5%) of all at-home workstations during the pilot program; and

(I) A commitment to comply with all other safeguards enumerated in this paragraph (b)(8) and the applicable rules in this chapter governing TRS.

(ii) *Authorization for at-home VRS call handling.* Upon Commission approval of a VRS provider's plan, the provider may conduct at-home VRS call handling during the period of the pilot program. The Commission may cancel such approval if a VRS provider fails to comply with any of the safeguards enumerated in this paragraph (b)(8) or other applicable mandatory minimum TRS standards. VRS providers may be subject to withholding, forfeitures, and penalties for noncompliant minutes handled by at-home workstations, as is the case for non-compliant minutes handled by call centers.

(iii) *Limit on minutes handled.* In any month of the program, a VRS provider may be compensated for minutes served by at-home CA workstations up to a maximum of *either* thirty percent (30%)

of a VRS provider's total minutes for which compensation is paid in that month or thirty percent (30%) of the provider's average monthly minutes for the 12 months ending October 31, 2017, whichever is greater.

(iv) *Personnel safeguards.* Before permitting CAs to handle VRS calls from at-home workstations, VRS providers shall:

(A) Ensure that each CA handling calls from an at-home workstation has the experience, skills, and knowledge necessary to effectively interpret from these workstations, including a thorough understanding of the TRS mandatory minimum standards and at least three years of experience as a call center CA.

(B) Establish protocols for the handling of calls from at-home workstations (to the extent there are additional protocols that differ from those applicable to the provider's call centers) and provide training to at-home CAs on such protocols, in addition to all applicable training that is required of CAs working from call centers.

(C) Provide each CA working from an at-home workstation equivalent support to that provided to CAs working from call centers, as needed to effectively handle calls, including, where appropriate, the opportunity to team interpret and consult with supervisors, and ensure that supervisors are readily available to a CA working from home to resolve problems that may arise during a relay call, such as difficulty in understanding a VRS user's signs, the need for added support for emergency calls, and relieving a CA in the event of the CA's sudden illness.

(D) Establish grounds for dismissing a CA from the at-home VRS call handling program (*i.e.*, for noncompliance with the standards and safeguards enumerated in this paragraph (b)(8) and the rules governing TRS), including a process for such termination in the event that the CA fails to adhere to these requirements, and provide such grounds and process in writing to each CA participating in the pilot program.

(E) Obtain from each CA handling calls from an at-home workstation a certification in writing of the CA's understanding of and commitment to complying with the rules in this chapter governing TRS, including rules governing caller confidentiality and fraud prevention, and the CA's understanding of the reasons and process for dismissal from the at-home VRS call handling program.

(v) *Technical and environmental safeguards.* Participating VRS providers shall ensure that each home environment used for at-home VRS call

handling enables the provision of confidential and uninterrupted services to the same extent as the provider's call centers and is seamlessly integrated into the provider's call routing, distribution, tracking, and support systems. VRS providers shall ensure that each at-home workstation:

(A) Resides in a separate, secure location in the CA's home, where access is restricted solely to the CA;

(B) Allows a CA to use all call-handling technology to the same extent as other CAs, including the ability to transition a non-emergency call to an emergency call, engage in virtual teaming with another CA, and allow supervisors to communicate with and oversee calls;

(C) Is capable of supporting VRS in compliance with the applicable mandatory minimum technical and emergency call handling standards to the same degree as these are available at call centers, including the ability to route VRS calls around individual CA workstations in the event the CA experiences a network outage or other service interruption;

(D) Is equipped with an effective means to prevent eavesdropping, such as white noise emitters or soundproofing, and to ensure that interruptions from noises outside the room do not adversely affect a CA's ability to interpret a call accurately and effectively; and

(E) Is connected to the provider's network over a secure connection to ensure caller privacy.

(vi) *Monitoring and oversight obligations.* VRS providers shall:

(A) Inspect and approve each at-home workstation before activating a CA's workstation for use;

(B) Assign a unique call center identification number (ID) to each VRS at-home workstation and use this call center ID to identify all minutes handled from each such workstation in its call detail records submitted monthly to the TRS Fund administrator;

(C) Equip each at-home workstation with monitoring technology sufficient to ensure that off-site supervision approximates the level of supervision at the provider's call center, including the ability to monitor both ends of a call, *i.e.*, video and audio, to the same extent as is possible in a call center, and regularly analyze the records and data produced by such monitoring to proactively address possible waste, fraud, and abuse;

(D) Keep all records pertaining to at-home workstations, including the data produced by any at-home workstation monitoring technology, except for any data that records the content of an

interpreted conversation, for a minimum of five years; and

(E) Conduct random and unannounced inspections of at least five percent (5%) of all at-home workstations during the pilot program.

(vii) *Commission audits and inspections.* At-home workstations and workstation records shall be subject to review, audit, and inspection by the Commission and the Fund administrator and unannounced on-site inspections by the Commission to the same extent as other call centers and call center records subject to the rules in this chapter.

(viii) *Monthly reports.* Each participating VRS provider shall report the following information to the TRS Fund administrator with its monthly requests for compensation:

(A) The call center ID and full street address (number, street, city, state, and zip code) for each at-home workstation and the CA ID number for each individual handling VRS calls from that workstation; and

(B) The location and call center IDs of call centers providing supervision for at-home workstations, plus the names of persons at such call centers responsible for oversight of such workstations.

(ix) *Six-month report.* Each participating VRS provider shall submit, no later than seven months after the start of its program, a report covering the first six months of its program, containing the following information:

(A) A description of the actual screening process used to select CAs for the at-home call handling program;

(B) Copies of training materials provided to at-home CAs;

(C) Copies of written protocols used for CAs working from home;

(D) The total number of CAs handling VRS calls from at-home workstations over the first six months of the program;

(E) The number of 911 calls handled by the provider's at-home workstations;

(F) A description and copies of any surveys or evaluations taken of CAs concerning their experience using at-home workstations and participating in an at-home call handling program;

(G) The total number of CAs terminated from the program;

(H) The total number of complaints, if any, submitted to the provider regarding its at-home call handling program or calls handled by at-home CAs;

(I) The total number of on-site inspections conducted of at-home workstations and the date and location of each inspection;

(J) A description of the monitoring technology used to monitor CAs working at home and an analysis of the experience of supervisors overseeing at-home CAs compared to overseeing CAs in a call center;

(K) Copies of any reports produced by tracking software and a description explaining how the provider analyzed the reports for anomalies; and

(L) Detailed documentation of costs incurred in the use of at-home workstations, including any costs associated with CA recruitment, training, and compensation, engineering and technical set-up (including workstation set-up), and administrative and management support (including oversight, evaluation, and recording).

(c) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(L) \* \* \*

(6) If the VRS provider submits a waiver request asserting exigent circumstances affecting one or more call centers that will make it highly improbable that the VRS provider will meet the speed-of-answer standard for call attempts occurring in a period of time identified by beginning and ending dates, the Fund administrator shall not withhold TRS Fund payments for a VRS provider's failure to meet the speed-of-answer standard during the identified period of time while the waiver request is under review by the Commission. In the event that the waiver request is denied, the speed-of-answer requirement is not met, and payment has been made to the provider from the TRS Fund for the identified period of time or a portion thereof, the provider shall return such payment to the TRS Fund for any period of time when the speed-of-answer requirement was not met.

\* \* \* \* \*

■ 4. Amend § 64.611 by:

■ a. Adding paragraph (a)(5);

■ b. Removing the "and" at the end of paragraph (g)(1)(v);

■ c. Removing the period at the end of paragraph (g)(1)(vi) and adding "; and" in its place;

■ d. Adding paragraph (g)(1)(vii); and

■ e. Revising paragraph (c)(2)(i).

The additions and revision read as follows:

**§ 64.611 Internet-based TRS registration.**

(a) \* \* \*

(5) *Assignment of iTRS Numbers to Hearing Point-to-Point Video Users.* (i) Before assigning an iTRS telephone number to a hearing individual, a VRS provider shall obtain from such individual, the individual's full name, residential address, date of birth, and a written certification, attesting that the individual:

(A) Is proficient in sign language;

(B) Understands that the iTRS number may be used only for the purpose of

point-to-point communication over distances with registered VRS users; and

(C) Understands that such iTRS number may not be used to access VRS.

(ii) Before assigning an iTRS telephone number to a hearing individual, a VRS provider also shall obtain the individual's consent to provide the information required by this paragraph (a)(5) to the TRS User Registration Database. Before obtaining such consent, the VRS provider, using clear, easily understood language, shall describe the specific information to be provided, explain that the information is provided to ensure proper administration of the TRS program and inform the individual that failure to provide consent will result in denial of service. VRS providers shall obtain and keep a record of affirmative acknowledgment of such consent by every hearing point-to-point video user to whom an iTRS number is assigned.

(iii) The certification required by paragraph (a)(5)(i) of this section must be made on a form separate from any other agreement or form, and must include a separate signature specific to the certification. For the purposes of this rule, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature. For the purposes of this rule, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

(iv) Before commencing service to any hearing point-to-point video user to whom a VRS provider assigns an iTRS number on or after the TRS User Registration Database is operational, a VRS provider shall submit to the TRS User Registration Database the information listed in paragraph (a)(5)(i) of this section and the following additional information:

(A) The ten-digit telephone number assigned in the TRS Numbering Directory to the hearing point-to-point user;

(B) The VRS provider's name and the date of service initiation; and

(C) The date on which a ten-digit number was assigned to or removed from a hearing point-to-point user.

(v) For all other hearing point-to-point video users to whom a VRS provider has assigned an iTRS number, the VRS provider shall transmit the information

required by paragraph (a)(5)(iv) of this section within 60 days after the TRS User Registration Database is operational.

(vi) Upon the termination of service to any hearing point-to-point video user, a VRS provider shall submit to the TRS User Registration Database the date of termination of service.

(vii) A VRS provider shall maintain the confidentiality of the information about hearing individuals required by this paragraph (a)(5) and may not disclose such information except as required by law or regulation.

(viii) Before commencing service to a hearing point-to-point video user who is transferring point-to-point video service from another VRS provider, a VRS provider shall notify the TRS User Registration Database of such transfer and shall obtain and submit a properly executed certification under paragraph (a)(5)(i) of this section.

(ix) Hearing individuals who are assigned iTRS numbers under this paragraph (a)(5) shall not be deemed registered VRS users. VRS providers shall not be compensated and shall not seek compensation from the TRS Fund for any VRS calls to or from such iTRS numbers.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Take such steps as are necessary to cease acquiring routing information from any VRS, IP Relay, or hearing point-to-point video user that ports his or her number to another VRS or IP Relay provider or otherwise selects a new default provider;

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(vii) If the provider assigns iTRS numbers to hearing point-to-point video users, an explanation that hearing point-to-point video users will not be able to place an emergency call.

\* \* \* \* \*

■ 5. Amend § 64.613 by revising paragraphs (a)(1) and (2) to read as follows:

**§ 64.613 Numbering directory for Internet-based TRS users.**

(a) \* \* \*

(1) The TRS Numbering Directory shall contain records mapping the geographically appropriate NANP telephone number of each Registered Internet-based TRS User and hearing point-to-point video user to a unique Uniform Resource Identifier (URI).

(2) For each record associated with a VRS or hearing point-to-point video user's geographically appropriate NANP

telephone number, the URI shall contain the IP address of the user's device. For each record associated with an IP Relay user's geographically appropriate NANP telephone number, the URI shall contain the user's user name and domain name that can be subsequently resolved to reach the user.

\* \* \* \* \*

■ 6. Amend § 64.615 by revising paragraphs (a)(3)(i) introductory text and (a)(3)(i)(A) to read as follows:

**§ 64.615 TRS User Registration Database and administrator.**

(a) \* \* \*

(3) \* \* \*

(i) Each VRS provider shall request that the administrator of the TRS User Registration Database remove from the TRS User Registration Database user information for any registered VRS user or hearing point-to-point video user:

(A) Who informs its default provider that it no longer wants use of a ten-digit number for TRS or (in the case of a hearing point-to-point video user) for point-to-point video service; or

\* \* \* \* \*

■ 7. Amend § 64.621 by revising paragraph (a)(1) to read as follows:

**§ 64.621 Interoperability and portability.**

(a) \* \* \*

(1) All VRS users and hearing point-to-point video users must be able to place a VRS or point-to-point video call through any of the VRS providers' services, and all VRS providers must be able to receive calls from, and make calls to, any VRS or hearing point-to-point video user.

\* \* \* \* \*

■ 8. Revise § 64.630 to read as follows:

**§ 64.630 Applicability of change of default TRS provider rules.**

(a) Sections 64.630 through 64.636 governing changes in default TRS providers shall apply to any provider of IP Relay or VRS eligible to receive payments from the TRS Fund.

(b) For purposes of §§ 64.630 through 64.636, the term *iTRS users* is defined as any individual that has been assigned a ten-digit NANP number from the TRS Numbering Directory for IP Relay, VRS, or point-to-point video service.

■ 9. Amend § 64.5101 by revising paragraph (b) to read as follows:

**§ 64.5101 Basis and purpose.**

\* \* \* \* \*

(b) *Purpose.* The purpose of the rules in this subpart is to implement customer proprietary network information protections for users of telecommunications relay services and

point-to-point video service pursuant to sections 4, 222, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 222, 225.

■ 10. Amend § 64.5103 by revising paragraph (m) to read as follows:

**§ 64.5103 Definitions.**

\* \* \* \* \*

(m) *Point-to-point service*. The term “point-to-point service” means a service that enables a VRS or hearing customer to place and receive non-relay calls without the assistance of a communications assistant over the facilities of a VRS provider using VRS access technology. Such calls are made by means of ten-digit NANP numbers registered in the TRS Numbering Directory and assigned to VRS customers and hearing point-to-point customers by VRS providers. The term “point-to-point call” shall refer to a call placed via a point-to-point service.

\* \* \* \* \*

[FR Doc. 2017-07155 Filed 4-12-17; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 270, and 272

[Docket No. FRA-2016-0021; Notice No. 3]

RIN 2130-AC59

#### Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act for a Violation of a Federal Railroad Safety Law, Federal Railroad Administration Safety Regulation or Order, or the Hazardous Material Transportation Laws or Regulations, Orders, Special Permits, and Approvals Issued Under Those Laws

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** On July 1, 2016, FRA published two interim final rules to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. FRA received no comments in response to the interim final rules. This document confirms the July 1, 2016, interim final rules will not be

changed and the effective date is August 1, 2016.

**DATES:** This final rule is effective April 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Veronica Chittim, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone 202-493-0273), [veronica.chittim@dot.gov](mailto:veronica.chittim@dot.gov).

**SUPPLEMENTARY INFORMATION:** Because FRA received no comments on its interim final rules published July 1, 2016, we are making no changes to the rules and the effective date is August 1, 2016. For regulatory analyses and notices associated with this action, please see the interim final rules published at 81 FR 43105 and 81 FR 43101.

■ Accordingly, the interim final rules published at 81 FR 43105 and 81 FR 43101 on July 1, 2016, are adopted as final without change.

**Patrick T. Warren,**

*Executive Director.*

[FR Doc. 2017-07467 Filed 4-12-17; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 160620545-6999-02]

RIN 0648-XF347

#### Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Groups Retention Limit Adjustment

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

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 25 LCS other than sandbar sharks per vessel per trip to 3 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 3 LCS other than sandbar sharks per vessel per

trip in the Atlantic region through the rest of the 2017 fishing season or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure is warranted. This retention limit adjustment will affect anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

**DATES:** This retention limit adjustment is effective at 11:30 p.m. local time April 15, 2017 through the end of the 2017 fishing season on December 31, 2017, or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

**FOR FURTHER INFORMATION CONTACT:** Lauren Latchford, Guý DuBeck, or Karyl Brewster-Geisz 301-427-8503; fax 301-713-1917.

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

Under § 635.24(a)(8), NMFS may adjust the commercial retention limit in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria and other relevant factors See § 635.24(a)(8)(i) through (vi). After considering these criteria as discussed below, we have concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year. Since landings have reached 20 percent of the quota and are projected to reach 80 percent before the end of the 2017 fishing season, NMFS is reducing the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar per vessel per trip.

• NMFS considered the inseason retention limit adjustment criteria listed in § 635.24(a)(8), which includes (broken down by bullet points): The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports.

Based on dealer reports, 32.9 mt dw or 19.5 percent of the 168.9 mt dw shark quota for the aggregated LCS management group has already been harvested in the Atlantic region. This means that approximately 80 percent of

the quota remains. These levels this early in the season indicate that the quota is being harvested too quickly and unless action is taken to slow harvest, fishermen in the Atlantic region may not have an opportunity to fish in the region for the remainder of the year.

- The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the average catch rate of landings data from dealer reports, the amount of aggregated LCS harvested on a daily basis is high. While fishermen are landing sharks within their per-trip limit of 25 fish per trip on a given day, they are making multiple trips a day that overall result in high numbers of aggregated LCS being caught rapidly throughout the fishery. This daily average catch rate means that aggregated LCS are being harvested too quickly to ensure fishing opportunities throughout the season. If the per trip limit is left unchanged, aggregated LCS would likely be harvested at such a high rate that there would not be enough aggregated LCS quota remaining to keep the fishery open year-round, precluding equitable fishing opportunities for the entire Atlantic region.

- Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates.

Once the landings reach 80 percent of the quota, NMFS would have to close the aggregated LCS management group as well as any other management group with “linked quotas” such as the hammerhead shark management group. Current catch rates would likely result in reaching this limit by the beginning of July. A closure so early in the year would preclude fishing opportunities in the Atlantic region for the remainder of the year.

- Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Reducing the retention limit for the aggregated LCS and hammerhead management group from 25 to 3 LCS per trip would allow for fishing opportunities later in the year consistent with the FMP’s objectives to ensure equitable fishing opportunities throughout the fishing season and to limit bycatch and discards.

- Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region exhibit a mixed species composition, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. As a result,

by slowing the harvest and reducing landings on a per-trip basis, both fisheries could remain open for the remainder of the year.

- Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

Based on dealer reports, and given NMFS’ notice to the regulated community (81 FR 84491) that a goal of this year’s fishery was to ensure fishing opportunities throughout the fishing season, NMFS has concluded that the aggregated LCS quota is being harvested too quickly to meet conservation and management goals for the fishery. If the harvest of these species is not slowed down, we estimate that the fishery would close by the beginning of July. Closing the fishery so early would prevent fishermen from other parts of the Atlantic region from having the same opportunities to harvest the aggregated LCS quota later in the year.

On November 23, 2016 (81 FR 84491), NMFS announced that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 metric tons (mt) dressed weight (dw) (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. In that final rule, NMFS also announced that if it appeared that the quota is being harvested too quickly, precluding fishing opportunities throughout the entire region (*e.g.*, if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would reduce the commercial retention limit to 3 LCS other than sandbar sharks. Dealer reports through April 6, 2017, indicate that 32.9 mt dw or 19.5 percent of the available quota for the aggregated LCS fishery has been harvested. If the average catch rate indicated by these reports continues, the landings could reach 80 percent of the quota by the beginning of July. Once the landings reach 80 percent of the quota, consistent with § 635.28(b)(3) (“linked quotas”), NMFS would close any species and/or management group of a linked group.

Accordingly, as of 11:30 p.m. local time April 15, 2017, NMFS is reducing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 25 LCS other than sandbar sharks per vessel per trip to 3 LCS other than sandbar sharks per vessel per trip. If the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the

recreational retention limits for sharks and “no sale” provisions apply (§ 635.22(a) and (c)), or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, then they are exempted from the retention limit adjustment.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip for the rest of the 2017 fishing season, or until NMFS announces via a notification in the **Federal Register** another adjustment to the retention limit or a fishery closure is warranted.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat, proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Atlantic region.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Providing prior notice and an opportunity for comment is impracticable because the catch and landings that need to be reduced are ongoing and must be reduced immediately to meet conservation and management objectives for the fishery. Continued fishing at those levels during the time that notice and comment takes place would result in the much of the quota being landed and could result in a very early closure of the fishery, contrary to the objectives of the existing conservation and management measures in place for those species. These objectives include ensuring that fishing opportunities are equitable and that bycatch and discards are minimized. Allowing fishing to continue at the existing rates even for a limited time is contrary to these objectives and would thus be impracticable. It would also be contrary to the public interest because, if the quota continues to be caught at the current levels, the quota will not last throughout the remainder of the fishing season and a large number of fishermen would be denied the opportunity to land sharks from the quota. Furthermore, continued catch at the current rates, even for a limited period,

could result in eventual quota overharvests, since it is still so early in the fishing year. The AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) for the same reasons. This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866. NMFS has

concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year.

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

Dated: April 10, 2017.

**Karen H. Abrams,**

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

[FR Doc. 2017-07495 Filed 4-10-17; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 82, No. 70

Thursday, April 13, 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 50 and 52

[Docket No. NRC–2015–0225]

RIN 3150–AJ68

### Emergency Preparedness for Small Modular Reactors and Other New Technologies

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory basis; public meeting, and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on a draft regulatory basis to support a rulemaking that would develop new emergency preparedness (EP) requirements for small modular reactors (SMRs) and other new technologies (ONTs), such as non-light-water reactors (non-LWRs) and medical isotope production facilities. The new EP regulations would be consequence-oriented, performance-based, and technology inclusive to the extent possible, and continue to provide reasonable assurance of adequate protection of public health and safety. The new EP regulations would be applicable to SMR and ONT facilities only. Large light-water reactors (LWRs), fuel cycle facilities, research and test reactors and other non-power, non-commercial, facilities are not in the scope of this rulemaking. The NRC plans to hold a public meeting to promote full understanding of the rulemaking and facilitate public participation.

**DATES:** Submit comments by June 27, 2017. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search

for Docket ID NRC–2015–0225. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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:** Andrew Carrera, Office of New Reactors, telephone: 301–415–1078, email: [Andrew.Carrera@nrc.gov](mailto:Andrew.Carrera@nrc.gov); and Arlon Costa, Office of New Reactors, telephone: 301–415–6402, email: [Arlon.Costa@nrc.gov](mailto:Arlon.Costa@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

#### SUPPLEMENTARY INFORMATION:

#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC–2015–0225 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–2015–0225.

- *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](mailto:pdr.resource@nrc.gov). The draft regulatory basis document is available in ADAMS under Accession No. ML16309A332.

- *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–2015–0225 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 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 not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

#### II. Discussion

The NRC is requesting comments on a draft regulatory basis to support a rulemaking that would amend part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic Licensing of Production and Utilization Facilities,” and part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” by adopting new EP regulations for SMR and ONT licensees. The specific objectives of this rulemaking effort are to establish new EP requirements for SMR and ONT licensees that will recognize: (1) Distance to which planning for initiation of predetermined protective actions is warranted, (2) time-dependent

characteristics of potential releases and exposures, and (3) isotopic characteristics of radioactive materials that can potentially be released to the environment.

The scope of the draft regulatory basis includes EP for new SMR and ONT facilities licensed under 10 CFR parts 50 and 52. Under current regulations for large LWR designs, the plume exposure pathway emergency planning zone (EPZ) size is about 10 miles (16 kilometers). However, SMRs and ONTs may have comparatively smaller reactor core size and also include passive design safety features, which result in potential accident releases and offsite radiation dose consequences that are smaller and may be delayed when compared to large LWRs. To account for this difference as compared to large LWRs, the NRC plans to develop a consequence-oriented, performance-based, and technology inclusive approach to EP for these SMR and ONT designs. With the proposed adoption of an approach for these designs where the plume exposure pathway EPZ size is scalable in proportion with potential accident consequences, the potential exists for this EPZ to be contained within the site boundary. The draft regulatory basis, in part, explains why the NRC believes the existing regulations should be updated, revised, and enhanced; presents alternatives to rulemaking; and discusses costs and other impacts of the potential changes.

### III. Specific Requests for Comments

The NRC is seeking comments and supporting rationale from the public on the following questions:

#### *Scope of Draft Regulatory Basis*

- Is the NRC considering an appropriate approach for each objective described in the draft regulatory basis?
- Section 3 of the draft regulatory basis discusses the regulatory concerns the NRC expects to address through rulemaking. Section 4 presents the intended regulatory changes to address those regulatory concerns, and also discusses alternatives to rulemaking considered by the NRC. Are there other regulatory concerns within or related to the scope of the rulemaking efforts (see Section 4) that the NRC should consider? Are there other approaches or alternatives the NRC should consider to resolve those regulatory concerns?
- Are there any other alternatives for EP for SMRs and ONTs to address beyond those discussed in the draft regulatory basis that the NRC should consider?

- Are there other EP related issues that the NRC staff should consider in further developing this regulatory basis?
- Is the scope of facilities to be included under the ONT umbrella (see Section 1.1) appropriate or can you suggest additions or deletions?

#### *Performance-Based Approach*

- What are the benefits of a performance-based EP approach, other than those described in the draft regulatory basis?
- Should the NRC continue research to establish performance-based criteria specific for SMRs and ONTs in the EP area? Examples of such research that has been performed are discussed in SECY-14-0038, “Performance-Based Framework for Nuclear Power Plant Emergency Preparedness Oversight,” (ADAMS Accession No. ML14259A589).
- Is it appropriate to establish combined risk-informed and performance-based criteria, and can you suggest EP areas or methods where they could successfully be implemented?

#### *Regulatory Impacts*

- Section 5 of the draft regulatory basis presents the NRC’s initial consideration of costs and other impacts for a number of key aspects of the potential regulatory changes. This initial assessment is based on limited available data. The NRC is seeking additional data and input relative to expected and/or unintentional impacts from the desired regulatory changes. What would be the potential impacts to stakeholders, such as applicants, licensees, and the public, from implementing any of the desired regulatory changes described in this draft regulatory basis? We are also seeking comments on reasonable cost estimates for implementation of the EP for SMRs and ONTs regulations, including one-time startup cost and annual cost?
- What would the cost be for 10 CFR part 52 licensees to be licensed under the proposed performance-based EP approach? What would be the cost difference between this new EP approach and the current EP approach in 10 CFR part 50?
- What impacts, other than cost, would result from the rulemaking action under consideration?

### IV. Cumulative Effects of Regulation

The cumulative effects of regulation (CER) describes the challenges that licensees or other impacted entities (such as State agency partners, Tribal and local governments) may face while implementing new regulatory positions, programs, and requirements (e.g., rules, generic letters, backfits, inspections).

The CER is an organizational 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. Therefore, the NRC is specifically requesting comments on the cumulative effects that may result from this proposed rulemaking. In developing comments on the draft regulatory basis, consider and provide comments on 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 proposed requirements, including changes to programs, procedures, and the facility?
2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for subsequent implementation of the new requirements, what period of time is sufficient?
3. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, and inspection findings of a generic nature) influence the subsequent implementation of the proposed rule’s requirements?
4. Are there unintended consequences? Does the draft regulatory basis create conditions that would be contrary to the draft regulatory basis’ purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

### V. Availability of Documents

The NRC may post documents related to this rulemaking activity to the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID: NRC-2015-0225.

The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2015-0225); (2) click the “Sign up for Email Alerts” link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

### VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal

agencies to write documents in a clear, concise, and 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 June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## VII. Public Meeting

The NRC plans to hold a public meeting during the public comment period for this notice. The public meeting will provide a forum for the NRC staff to discuss the issues and questions with external stakeholders regarding the draft regulatory basis to add new EP requirements for SMRs and ONTs. The NRC does not intend to provide detailed responses to comments or other information submitted during the public meeting.

The public meeting will be noticed on the NRC's public meeting Web site at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's Public Meeting Schedule Web page for additional information about the public meeting at <http://meetings.nrc.gov/pmns/mtg>.

The NRC will post a notice for the public meeting and may post additional material related to this action to the Federal rulemaking Web site at [www.regulations.gov](http://www.regulations.gov) under Docket ID NRC-2015-0225.

Dated at Rockville, Maryland, this 29th day of March 2017.

For the Nuclear Regulatory Commission.

**Robert K. Caldwell,**

*Acting Director, Division of Engineering and Infrastructure, Office of New Reactors.*

[FR Doc. 2017-07502 Filed 4-12-17; 8:45 am]

**BILLING CODE 7590-01-P**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2017-0248; Directorate Identifier 2016-NM-088-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2014-26-

10, for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2014-26-10 currently requires revising the maintenance or inspection program to incorporate maintenance requirements and airworthiness limitations. Since we issued AD 2014-26-10, we have determined that more restrictive maintenance instructions and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or revised airworthiness limitation requirements. This proposed AD also removes airplanes from the applicability. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by May 30, 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 Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); Internet: <http://www.airbus.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-2017-0248; 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:

Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone: 425-227-1405; fax: 425-227-1149.

#### 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-2017-0248; Directorate Identifier 2016-NM-088-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 December 19, 2014, we issued AD 2014-26-10, Amendment 39-18061 (80 FR 2813, January 21, 2015) ("AD 2014-26-10"), for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2014-26-10 was prompted by a determination that the maintenance actions for airplane systems susceptible to aging must be mandated. AD 2014-26-10 requires revising the maintenance or inspection program to incorporate maintenance requirements and airworthiness limitations. We issued AD 2014-26-10 to mitigate the risks associated with aging effects of airplane systems. Such aging effects could change the characteristics of the systems leading to an increased potential for failure, which could result in failure of certain life-limited parts, and reduced structural integrity or reduced controllability of the airplane.

Since we issued AD 2014-26-10, we have determined that more restrictive maintenance instructions and airworthiness limitations are necessary.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016-0093, dated May 13, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the

MCAI'), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

The airworthiness limitations for Airbus A320 family aeroplanes are currently defined and published in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) documents. The airworthiness limitations applicable to the System Equipment Maintenance Requirements, which are approved by [European Aviation Safety Agency] EASA, are specified in ALS Part 4.

The instructions contained in the ALS Part 4 have been identified as mandatory actions for continued airworthiness. Failure to comply with these instructions could result in an unsafe condition.

Previously, EASA issued AD 2013-0146 [which corresponds to FAA AD 2014-26-10] to require accomplishment of all maintenance actions as described in ALS Part 4 at Revision 01. The new ALS Part 4 Revision 03 (hereafter referred to as 'the ALS' in this AD) includes new and/or more restrictive requirements. ALS Part 4 Revision 03, issue 02, has been released to include editorial changes.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013-0146, which is superseded, and requires accomplishment of the actions specified in the ALS.

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-2017-0248.

#### **Related Service Information Under 1 CFR Part 51**

Airbus has issued Airbus A318/A319/A320/A321 ALS Part 4, "System Equipment Maintenance Requirements (SEMR)" Revision 03 at Issue 02, dated January 22, 2016. The service information describes preventative maintenance requirements and includes updated inspections and intervals to be incorporated into the maintenance or inspection program. 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**.

#### **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.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

#### **Differences Between This Proposed AD and the MCAI or Service Information**

The EASA AD specifies that if there are findings from the ALS inspection tasks, then corrective action must be accomplished in accordance with Airbus maintenance documentation. However, this proposed AD does not include that requirement because operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to use FAA-acceptable methods when performing maintenance. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Although the EASA AD recommends accomplishing the tasks specified in the ALS after the effective date of the EASA AD, and revising the maintenance program within 12 months after the effective date of the EASA AD, this proposed AD would only require revising the maintenance or inspection program within 30 days after the effective date of this AD, which correlates with the compliance time required by AD 2014-26-10. In developing an appropriate compliance time for this proposed AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the revision (1 work-hour). In light of these factors, we find that a 30-day compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

These differences have been coordinated with the EASA and Airbus.

#### **Airworthiness Limitations Based on Type Design**

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of an ALS revision into an operator's maintenance or inspection program.

Typically, when these types of ADs are issued by civil aviation authorities of other countries, they apply to all airplanes covered under an identified type certificate (TC). The corresponding FAA AD typically retains applicability to all of those airplanes.

In addition, U.S. operators must operate their airplanes in an airworthiness condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 14 CFR 91.403(c), unless an alternative has been approved by the FAA.

When a type certificate is issued for a type design, the specific ALS, including revisions, is a part of that type design, as specified in 14 CFR 21.31(c).

The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS defined in the type design referenced in the manufacturer's conformity statement. This obligation may introduce a conflict with an AD that requires a specific ALS revision if new airplanes are delivered with a later revision as part of their type design.

To address this conflict, the FAA has approved alternative methods of compliance (AMOCs) that allow operators to incorporate the most recent ALS revision into their maintenance/inspection programs, in lieu of the ALS revision required by the AD. This eliminates the conflict and enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD.

This proposed AD therefore would apply to the airplanes identified in

paragraph (c) of this AD with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of approval of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

#### Costs of Compliance

We estimate that this proposed AD affects 1,032 airplanes of U.S. registry. The actions required by AD 2014–26–10, and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of \$85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2014–26–10 is \$85 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$87,720, or \$85 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) 2014–26–10, Amendment 39–18061 (80 FR 2813, January 21, 2015), and adding the following new AD:

**Airbus:** Docket No. FAA–2017–0248; Directorate Identifier 2016–NM–088–AD.

#### (a) Comments Due Date

We must receive comments by May 30, 2017.

#### (b) Affected ADs

This AD replaces AD 2014–26–10, Amendment 39–18061 (80 FR 2813, January 21, 2015) ("AD 2014–26–10").

#### (c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; certificated in any category; with an original certificate of airworthiness or original export certificate of airworthiness issued on or before December 21, 2015.

- (1) Model A318–111, –112, –121, and –122 airplanes.
- (2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.
- (3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.
- (4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

#### (d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

#### (e) Reason

This AD was prompted by a determination that more restrictive maintenance instructions and airworthiness limitations are necessary. We are issuing this AD to mitigate the risks associated with aging effects of airplane systems. Such aging effects could change the characteristics of the systems leading to an increased potential for failure, which could result in failure of certain life-limited parts, and reduced structural integrity or reduced controllability of the airplane.

#### (f) Compliance

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

#### (g) Retained Requirement: Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2014–26–10, with no changes. Within 30 days after February 25, 2015 (the effective date of AD 2014–26–10): Revise the maintenance or inspection program, as applicable, to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitations Section, ALS Part 4, "Aging Systems Maintenance," Revision 01, dated June 15, 2012. The initial compliance time for doing the actions is at the applicable time specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section, ALS Part 4, "Aging Systems Maintenance," Revision 01, dated June 15, 2012; or within 2 weeks after revising the maintenance or inspection program; whichever occurs later. Accomplishing the actions specified in paragraph (i) of this AD terminates the requirements of this paragraph.

#### (h) Retained Requirement: No Alternative Actions or Intervals, With New Paragraph Reference

This paragraph restates the requirements of paragraph (h) of AD 2014–26–10, with new paragraph reference. Except as required by paragraph (i) of this AD, after accomplishment of the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

#### (i) New Requirement: 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 Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 4, "System Equipment Maintenance Requirements (SEMR)" Revision 03 at Issue 02, dated January 22, 2016. The initial compliance time for doing the actions is at the applicable time specified in Airbus A318/

A319/A320/A321 Airworthiness Limitations Section, ALS Part 4, "System Equipment Maintenance Requirements (SEMR)" Revision 03 at Issue 02, dated January 22, 2016; or within 2 weeks after revising the maintenance or inspection program; whichever occurs later. Accomplishing the actions specified in this paragraph terminates the requirements of paragraph (g) of this AD.

**(j) New Provision: No Alternative Actions or Intervals**

After the action required by paragraph (i) of this AD has been done, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

**(k) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone: 425-227-1405; fax: 425-227-1149. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov).

(i) 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.

(ii) AMOCs approved previously for AD 2014-26-10 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(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, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(l) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016-0093, dated May 13, 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-2017-0248.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: [account.airworth-eas@](mailto:account.airworth-eas@)

[airbus.com](http://www.airbus.com); Internet: <http://www.airbus.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 April 5, 2017.

**Michael Kaszycki**,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2017-07441 Filed 4-12-17; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA-2017-0249; Directorate Identifier 2016-NM-138-AD]**

**RIN 2120-AA64**

**Airworthiness Directives; The Boeing Company Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 757-200, -200PF, and -200CB series airplanes. This proposed AD was prompted by reports of slats disbonding on airplanes on which the terminating actions of AD 2005-07-08 had been performed. We have also received reports of slats disbonding on airplanes outside of the applicability of AD 90-23-06, AD 91-22-51, and AD 2005-07-08. This proposed AD would require determining the type of trailing edge slat wedges of the leading edge slats, repetitive inspections for disbonding on certain trailing edge slat wedges, and corrective actions, if necessary. This proposed AD would also provide an optional terminating action for the repetitive inspections. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by May 30, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.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-2017-0249.

**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-2017-0249; 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 Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Lu Lu, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6577; fax: 425-917-6478; email: [lu.lu@faa.gov](mailto:lu.lu@faa.gov).

**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-2017-0249; Directorate Identifier 2016-NM-138-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 because of 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**

We have received reports of slats disbonding on airplanes on which the terminating actions of AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005), had been performed. We have also received reports of slats disbonding on airplanes outside of the applicability of AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990); AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992); and AD 2005–07–08. Inspection of submitted damaged trailing edge slat wedges indicated that the panels had been contaminated with moisture ingress, as there was evidence of aluminum oxide powder on the core, and the adhesive had failed at the skin-to-core bondline. It is suspected that there was incomplete removal of moisture and honeycomb core corrosion during the repair of the trailing edge slat wedges or that moisture had previously migrated into the panel and was subsequently sealed inside.

One operator reported major skin-to-core disbonding of a trailing edge slat wedge when the airplane had accumulated 42,603 total flight hours and 9,808 total flight cycles. Another operator reported the departure of a trailing edge slat wedge during flight when the airplane had accumulated 47,470 total flight hours and 17,579 total flight cycles. We are proposing this AD to prevent delamination of the trailing

edge slat wedges of the leading edge slats. This delamination could cause loss of pieces of the trailing edge slat wedge assemblies during flight, reduction of the maneuver and stall margins, and consequent reduced controllability of the airplane.

**Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Special Attention Service Bulletin 757–57–0066, Revision 1, dated June 7, 2016 (“SASB 757–57–0066, R1”). The service information describes procedures for doing inspections on trailing edge slat wedges of the leading edge slats for areas of skin-to-core and aft edge disbonding, and corrective actions including replacement of certain slat wedges. 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**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under “Differences Between this Proposed AD and the Service Information.” For information on the procedures and

compliance times, see this service information at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0249.

The phrase “related investigative actions” is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase “corrective actions” is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

**Differences Between This Proposed AD and the Service Information**

SASB 757–57–0066, R1, specifies to contact the manufacturer for certain instructions, but this proposed AD would require using repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

**Costs of Compliance**

We estimate that this proposed AD affects 469 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
Inspections .....	Up to 24 work-hours × \$85 per hour = \$2,040 per inspection cycle.	\$0	Up to \$2,040 per inspection cycle.	Up to \$956,760 per inspection cycle.

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspections. We have no way

of determining the number of aircraft that might need these replacements:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Wedge replacement (per wedge) .....	43 work-hours × \$85 per hour = \$3,655 .....	Up to \$84,636 .....	Up to \$88,291.

The on-condition costs are an estimate of the cost of replacing a type A wedge with a type B wedge, which is a terminating action for the required inspections. There are up to 10 wedge assemblies per airplane, and the price

range for a new assembly is \$50,923 to \$84,636 based on the information provided by Boeing.

The cost of repairing a type A wedge cannot be estimated because damage type and size may vary widely.

**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):

**The Boeing Company:** Docket No. FAA–2017–0249; Directorate Identifier 2016–NM–138–AD.

#### (a) Comments Due Date

We must receive comments by May 30, 2017.

#### (b) Affected ADs

This AD affects AD 90–23–06, Amendment 39–6794 (55 FR 46499, November 5, 1990) ("AD 90–23–06"); AD 91–22–51, Amendment 39–8129 (57 FR 781, January 9, 1992) ("AD 91–22–51"); and AD 2005–07–08, Amendment 39–14032 (70 FR 16403, March 31, 2005) ("AD 2005–07–08").

#### (c) Applicability

This AD applies to all The Boeing Company Model 757–200, –200PF, and –200CB series airplanes, certificated in any category.

#### (d) Subject

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

#### (e) Unsafe Condition

This AD was prompted by reports of slats disbonding on airplanes on which the terminating actions of AD 2005–07–08 had been performed. We have also received reports of slats disbonding on airplanes outside of the applicability of AD 90–23–06, AD 91–22–51, and AD 2005–07–08. We are issuing this AD to prevent delamination of the trailing edge slat wedges of the leading edge slats. This delamination could cause loss of pieces of the trailing edge slat wedge assemblies during flight, reduction of the maneuver and stall margins, and consequent reduced controllability of the airplane.

#### (f) Compliance

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

#### (g) Inspection to Determine Slat Wedge Type

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–57–0066, Revision 1, dated June 7, 2016 ("SASB 757–57–0066, R1"), except as specified in paragraph (j)(1) of this AD: Inspect each trailing edge slat wedge of the leading edge slats in accordance with Appendices A, B, C, and D of SASB 757–57–0066, R1, or review the airplane maintenance records, to determine whether the slat wedge is a type A or a type B. If a maintenance records review cannot conclusively determine a slat wedge is a type B, it must be assumed to be a type A slat wedge or a physical inspection must be done as specified in this paragraph.

#### (h) Type A Slat Wedge Repetitive Inspections, Related Investigative Actions, and Corrective Actions

For each type A trailing edge slat wedge found during the inspection or records review required by paragraph (g) of this AD: At the applicable time specified in paragraph 1.E., "Compliance," of SASB 757–57–0066, R1, except as specified in paragraph (j)(1) of this AD, do an ultrasonic low frequency bond test inspection, a tap test inspection, or a

through transmission ultrasonic (TTU) inspection for skin-to-core disbonds of the honeycomb area of the trailing edge slat wedge; do a detailed inspection for aft edge disbonds of the aft edge of the trailing edge slat wedge; do a general visual inspection for any previously accomplished repair; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of SASB 757–57–0066, R1, except as specified in paragraphs (i) and (j)(2) of this AD. Do all applicable related investigative and corrective actions at the applicable time specified in paragraph 1.E., "Compliance," of SASB 757–57–0066, R1. Repeat the applicable inspections on each type A trailing edge slat wedge thereafter at the applicable intervals specified in paragraph 1.E., "Compliance," of SASB 757–57–0066, R1.

#### (i) Repaired Type A Slat Wedge Repetitive Inspections, Related Investigative Actions and Corrective Actions

(1) For each type A trailing edge slat wedge with any class 1 disbond repair or any previously accomplished repair subject to the Part 2 inspection as identified in SASB 757–57–0066, R1: At the applicable time specified in paragraph 1.E., "Compliance," of SASB 757–57–0066, R1, do an ultrasonic low frequency bond test inspection, a tap test inspection, or a TTU inspection for skin-to-core disbonds in the repaired area of the trailing edge slat wedge; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of SASB 757–57–0066, R1, except as specified in paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection on each type A trailing edge slat wedge thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of SASB 757–57–0066, R1.

(2) For each type A trailing edge slat wedge with any time-limited class 2 disbond repair as identified in SASB 757–57–0066, R1: At the applicable time specified in paragraph 1.E., "Compliance," of SASB 757–57–0066, R1, do a detailed inspection for any peeling or deterioration of the aluminum foil tape of the repaired area on the trailing edge slat wedge; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of SASB 757–57–0066, R1, except as specified in paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection on each type A trailing edge slat wedge thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of SASB 757–57–0066, R1, until a permanent repair is done to complete the actions required for the time-limited class 2 disbond repair, specified as corrective actions in paragraph (h) of this AD.

(3) For each type A trailing edge slat wedge with any permanent class 2 disbond repair as identified in SASB 757–57–0066, R1: At the applicable time specified in paragraph 1.E., "Compliance," of SASB 757–57–0066, R1, do an ultrasonic low frequency bond test

inspection or a TTU inspection for any disbonding of the aft edge repaired areas; a detailed inspection for disbands along the aft edge of the repaired areas; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of SASB 757-57-0066, R1, except as specified in paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection on each type A trailing edge slat wedge thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of SASB 757-57-0066, R1.

(4) For each type A trailing edge slat wedge with any class 3 or class 4 disbond repair, or any previously accomplished repair subject to Part 5 inspection as identified in SASB 757-57-0066, R1: At the applicable time specified in paragraph 1.E., "Compliance," of SASB 757-57-0066, R1, do the applicable actions specified in paragraphs (i)(4)(i) and (i)(4)(ii) of this AD.

(i) For any class 3 disbond repair with a repair doubler common to the aft edge of the trailing edge slat wedge; for any previously accomplished repair with a repair doubler common to the aft edge of the trailing edge slat wedge; and for any class 4 disbond repair: Do an ultrasonic low frequency bond test inspection or a TTU inspection for any disbonding of the aft edge repaired areas; a detailed inspection for disbands along the aft edge of the repaired areas; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of SASB 757-57-0066, R1, except as specified in paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection on each type A trailing edge slat wedge thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of SASB 757-57-0066, R1.

(ii) For any class 3 disbond repair without a repair doubler common to the aft edge of the trailing edge slat wedge; and for any previously accomplished repair without a repair doubler common to the aft edge of the trailing edge slat wedge: Do an ultrasonic low frequency bond test inspection, a tap test inspection, or a TTU inspection for skin-to-core disbands of the honeycomb area of the trailing edge slat wedge in the repaired area; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of SASB 757-57-0066, R1, except as specified in paragraph (j)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection on each type A trailing edge slat wedge thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of SASB 757-57-0066, R1.

#### (j) Exceptions to Service Information

(1) Where paragraph 1.E., "Compliance," of SASB 757-57-0066, R1, specifies a compliance time "after the Revision 1 date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If any disbonding is found during any inspection required by this AD, and SASB

757-57-0066, R1, specifies to contact Boeing for appropriate action: Before further flight, repair the disbonding using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

#### (k) Optional Terminating Action for Repetitive Inspections

Replacing a type A trailing edge slat wedge with a type B trailing edge slat wedge in accordance with the Accomplishment Instructions of SASB 757-57-0066, R1, terminates the repetitive inspections required by this AD for the replaced wedge.

#### (l) Terminating Action for Certain Other ADs

Accomplishing the initial inspections required by paragraphs (g) and (h) of this AD on a trailing edge slat wedge terminates all the requirements of AD 90-23-06, AD 91-22-51, and AD 2005-07-08 for that slat wedge.

#### (m) Parts Installation Limitation

As of the effective date of this AD: A replacement type A wedge may be installed provided that the initial and repetitive inspections specified in paragraph (h) and (i) of this AD are done within the applicable compliance times specified in paragraph (h) and (i) of this AD and all applicable related investigative and corrective actions are done within the applicable compliance times specified in paragraphs (h) and (i) of this AD.

#### (n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), 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 the attention of the person identified in paragraph (o)(1) of this AD. Information may be emailed to: [9-ANM-LAACO-AMOC-Requests@faa.gov](mailto:9-ANM-LAACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (j)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (n)(4)(i) and (n)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is

labeled "RC Exempt," then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

#### (o) Related Information

(1) For more information about this AD, contact Lu Lu, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6478; fax: 425-917-6590; email: [lu.lu@faa.gov](mailto:lu.lu@faa.gov).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.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.

Issued in Renton, Washington, on April 5, 2017.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2017-07440 Filed 4-12-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2017-0195; Airspace Docket No. 16-ANM-14]

#### Proposed Amendment of Class E Airspace; Medford, OR

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify Class E airspace designated as an extension to a Class D or E surface area, modify Class E airspace extending upward from 700 feet above the surface, and remove Class E airspace upward from 1,200 feet above the surface at Rogue Valley International-Medford Airport, Medford, OR. This action is necessary due to the proposed decommissioning of the PUMIE locator outer marker and removal of the VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) from the airspace

description as the FAA transitions from ground-based navigation aids to satellite-based navigation. Also, this action would update the airport's geographic coordinates for Class D and E airspace areas to reflect the FAA's current aeronautical database.

**DATES:** Comments must be received on or before May 30, 2017.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590; telephone: 1-800-647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2017-0195; Airspace Docket No. 16-ANM-14, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202-267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

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

**FOR FURTHER INFORMATION CONTACT:** Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4511.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of

airspace. This regulation is within the scope of that authority as it would allow the transition to satellite navigation by amending Class D and Class E airspace at Rogue Valley International-Medford Airport, Medford, OR.

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2017-0195/Airspace Docket No. 16-ANM-14." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

**Availability and Summary of Documents Proposed for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace designated as an extension to a Class D or E surface area, modifying Class E airspace extending upward from 700 feet above the surface, and removing Class E airspace upward from 1,200 feet above the surface at Rogue Valley International-Medford Airport, Medford, OR. This action is necessary due to the proposed decommissioning of the PUMIE locator outer marker and for the safety and management of the national airspace system as the FAA transitions from ground based navigation aids to satellite based navigation.

Class E airspace designated as an extension to Class D or E surface area northeast of the airport would be reduced to a 4-mile wide segment (from 5.5 miles wide) extending to 11 miles northwest (from 17.5 miles northwest) of the airport, and the segment to the southeast would be reduced to a 5-mile wide segment (from 8 miles), extending to 9 miles (from 19.4 miles) southeast of the airport. Class E airspace extending upward from 700 feet above the surface would be reduced northeast, southeast, and southwest of the airport to only that area necessary to contain IFR departures within 1,500 feet of the surface and IFR departures until reaching 1,200 feet above the surface. Additionally, the Class E airspace area extending upward from 1,200 feet above the surface designated for Rogue Valley International-Medford Airport would be removed, as this airspace duplicates the Rogue Valley Class E en route airspace area.

Also, the geographic coordinates for the airport included in the legal descriptions for Class D and E airspace areas would be updated to match the FAA's current aeronautical database.

Class D and Class E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11A,

dated August 3, 2016 and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

### Regulatory Notices and Analyses

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

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

#### ANM OR D Medford, OR [Modified]

Rogue Valley International-Medford Airport, OR

(Lat. 42°22'27" N., long. 122°52'25" W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of Rogue Valley International-Medford Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

\* \* \* \* \*

#### ANM OR E2 Medford, OR [Modified]

Rogue Valley International-Medford Airport, OR

(Lat. 42°22'27" N., long. 122°52'25" W.)

That airspace extending upward from the surface within a 4.1-mile radius of Rogue Valley International-Medford Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.*

\* \* \* \* \*

#### ANM OR E4 Medford, OR [Modified]

Rogue Valley International-Medford Airport, OR

(Lat. 42°22'27" N., long. 122°52'25" W.)

That airspace extending upward from the surface within 2.5 miles each side of the 159° bearing from the Rogue Valley International-Medford Airport, extending from the 4.1-mile radius of the airport to 9 miles southeast of the airport, and within 2 miles each side of the 339° bearing from the airport extending from the 4.1-mile radius of the airport to 11 miles northwest of the airport.

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

\* \* \* \* \*

#### ANM OR E5 Medford, OR [Modified]

Rogue Valley International-Medford Airport, OR

(Lat. 42°22'27" N., long. 122°52'25" W.)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Rogue Valley International-Medford Airport, and within 4 miles each side of the 159° bearing from the airport extending from the 9-mile radius to 18.5 miles southeast of the airport, and within 9 miles west and 5.5 miles east of the 352° bearing from the airport extending from the 9-mile radius of the airport to 26 miles northwest of the airport.

Issued in Seattle, Washington, on April 4, 2017.

**Sam S.L. Shrimpton,**

*Acting Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2017-07380 Filed 4-12-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2017-0184; Airspace Docket No. 17-ASW-5]

### Proposed Amendment of Class E Airspace; Pauls Valley, OK

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify Class E airspace extending up to 700 feet above the surface at Pauls Valley Municipal Airport, Pauls Valley, OK. Airspace reconfiguration is necessary due to the decommissioning of the Pauls Valley non-directional radio beacon (NDB), and cancellation of the NDB approach. This proposed action would enhance the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before May 30, 2017.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9826, or 1-800-647-5527. You must identify FAA Docket No. FAA-2017-0184; Airspace Docket No. 17-ASW-5, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591;

telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to [http://www.archives.gov/federal-register/code-of-federal-regulations/ibr\\_locations.html](http://www.archives.gov/federal-register/code-of-federal-regulations/ibr_locations.html). FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**FOR FURTHER INFORMATION CONTACT:** Ron Laster, Federal Aviation Administration, Contract Support, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5879.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify Class E airspace extending up to and including 700 feet above the surface area at Pauls Valley Municipal Airport, Pauls Valley, OK.

##### **Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2017–0184/Airspace Docket No. 17–ASW–5." The postcard

will be date/time stamped and returned to the commenter.

##### **Availability of NPRMs**

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

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

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### **Availability and Summary of Documents Proposed for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

##### **The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Pauls Valley Municipal Airport, Pauls Valley, OK. The segment 2.6 miles each side of the 169° bearing from the Pauls Valley NDB extending from the 6.6-mile radius to 7.6 miles south of the airport would be removed due to the decommissioning of the NDB, and cancellation of NDB approach. This action would enhance the safety and management of the standard instrument

approach procedures for IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

##### **Regulatory Notices and Analyses**

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

##### **Environmental Review**

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

##### **List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

##### **The Proposed Amendment**

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

##### **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting

Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

*Paragraph 6005 Class E Airspace Areas.*

\* \* \* \* \*

#### ASW OK E5 Pauls Valley, OK

*Pauls Valley Municipal Airport, OK*

(Lat. 34° 42'34" N., long. 97° 13'24" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Pauls Valley Municipal Airport, and within 4 miles each side of the 000° bearing from the airport extending from the 6.6-mile radius to 11.6 miles north of the airport.

Issued in Fort Worth, Texas, on April 4, 2017.

**Walter Tweedy,**

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

[FR Doc. 2017-07378 Filed 4-12-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2017-0207]

RIN 1625-AA08

#### Special Local Regulation; Coos Bay, North Bend, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary regulated area during the inbound and outbound transit of the tall ships participating in the Festival of Sail to be held on the waters of Coos Bay. This action is necessary to safeguard participants and spectators from the hazards associated with the limited maneuverability of tall ships and to ensure public safety during their transit. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 15, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG-USCG-2017-0207 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 about this proposed

rulemaking, call or email LCDR Laura Springer, MSU Portland Waterways; 503-240-9319, email [msupdxwmm@uscg.mil](mailto:msupdxwmm@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

On June 1, 2017, and again on June 5, 2017, several class A and B tall sailing ships will be transiting the waters of Coos Bay as part of the Festival of Sail Coos Bay. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard proposes to temporarily restrict vessel traffic during the the inbound and outbound transit of the tall sailing ships.

The purpose of this rulemaking is to protect the tall ships from potential harm and to protect the public from the hazards associated with the limited maneuverability of these types of ships. Many factors amplify the potential hazardousness of the situation, including: large numbers of local recreational and fishing vessels; a narrow channel; and, low maneuverability of the tall ships. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233.

##### III. Discussion of Proposed Rule

The Coast Guard proposes to establish a regulated area during the inbound and outbound transit of participating tall sailing ships on June 1, 2017 and June 5, 2017. The regulated area would cover all navigable waters of Coos Bay from the sea buoy to the Ferndale Lower Range in North Bend, OR. The duration of the regulated area is intended to ensure the safety of vessels, bystanders, and the navigable waters during the tall ships' inbound and outbound transits. The Coast Guard, at its discretion, would allow the passage of affected vessels. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

##### IV. Regulatory Analyses

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

Executive orders and we discuss First Amendment rights of protestors.

##### A. Regulatory Planning and Review

E.O.s 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. Although this proposal would prevent traffic from transiting portions of Coos Bay, the effect of this regulation would not be significant due to the limited duration that the regulated area will be in effect and will allow waterway users to enter or transit through the zone when deemed safe by the on-scene patrol commander. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulated area.

##### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and

operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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

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

#### C. Collection of Information

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

#### D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, 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 rule involves a Special Local Regulation for a regulated area lasting less than 3 hours during each transit period that will prohibit vessels from entering an area encompassing Coos Bay from the sea buoy to the Ferndale Lower Range unless given permission to do so by the on-scene patrol commander or his designated representative. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.ID. 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

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

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

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

**Authority:** 33 U.S.C. 1233.

- 2. Add § 100.T13–0207 to read as follows:

**§ 100.T13–0207 Special Local Regulations; Festival of Sail Coos Bay**

(a) *Regulated Area.* The following area is designated as a regulated area: All navigable waters of Coos Bay, from the sea buoy to the Ferndale Lower Range.

(b) *Special Local Regulations.* (1) The Coast Guard may patrol the regulated 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.

(2) Entrance into the regulated area is prohibited unless authorized by the Patrol Commander. The Patrol Commander may control the movement of all vessels in the regulated area. When hailed or signaled to stop 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.

(3) All vessels permitted to transit the regulated area shall maintain a separation of at least 100 yards away from the participating tall sailing ships and a distance of at least 50 yards away while transiting in the vicinity of the McCullough Memorial Bridge and the Coos Bay railroad bridge.

(c) *Enforcement Period.* This regulated area is in effect while the tall sailing ships are transiting Coos Bay, inbound on June 1, 2017 and outbound on June 5, 2017.

Dated: April 3, 2017.

**M.E. Butt,**

*RADM, U.S. Coast Guard, Commander,  
Thirteenth Coast Guard District.*

[FR Doc. 2017–07513 Filed 4–12–17; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 100 and 165**

[Docket Number USCG–2016–0998]

RIN 1625–AA08; AA00

**Special Local Regulations and Safety Zones; Recurring Marine Events Held in the Coast Guard Sector Northern New England Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to update the special local regulations and permanent safety zones in Coast Guard Sector Northern New England Captain of the Port Zone for annual recurring marine events. When enforced, these proposed special local regulations and safety zones would restrict vessels from portions of water areas during certain annually recurring events. The proposed special local regulations and safety zones are intended to expedite public notification and ensure the protection of the maritime public and event participants from the hazards associated with certain maritime events. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 15, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0998 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 instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rulemaking, call or email Chief Marine Science Technician Chris Bains, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207–347–5003, email [Chris.D.Bains@uscg.mil](mailto:Chris.D.Bains@uscg.mil).

**SUPPLEMENTARY INFORMATION:****I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
E.O. Executive order  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
NAD 83 North American Datum of 1983  
Pub. L. Public Law  
§ Section  
U.S.C. United States Code

**II. Background, Purpose, and Legal Basis**

Swim events, fireworks displays, and marine events are held on an annual recurring basis on the navigable waters within the Coast Guard Sector Northern New England COTP Zone. The Coast Guard has established special local regulations, regulated areas, and safety zones for these annual 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. In the past, the Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from the Coast Guard’s regulations associated

with these annually recurring events. Known events were assessed for their likelihood to recur in subsequent years or to discontinue, and were added to or deleted from the tables accordingly. In addition, minor changes to existing events were made to ensure the accuracy of event details. The purpose of this rulemaking is to reduce administrative overhead, expedite public notification of events, and ensure the protection of the maritime public during marine events in the Sector Northern New England area.

**III. Discussion of Proposed Rule**

The proposed rule would update the tables of annual recurring events in the existing regulation for the Coast Guard Sector Northern New England COTP Zone, deleting outdated zones and providing updated information on dates, times, and locations. The tables provide the event name, sponsor, and type, as well as approximate times, dates, and locations of the events. Advanced public notification of specific times, dates, regulated areas, and enforcement periods for each event will be provided through appropriate means, which may include, but are not limited to, the Local Notice to Mariners, Broadcast Notice to Mariners, or a Notice of Enforcement published in the **Federal Register** at least 30 days prior to the event date. If an event does not have a date and time listed in this regulation, then the precise dates and times of the enforcement period for that event will be announced through a Local Notice to Mariners and, if time permits, a Notice of Enforcement in the **Federal Register**.

**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**

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and

Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this proposed rule is not a significant regulatory action, this proposed rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

We expect the economic impact of this proposed rule to be minimal. This regulation may have an impact on the general public, but that potential impact will likely be minimized for the following reason: The Coast Guard is only modifying an existing regulation to account for updated information.

## 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 will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones or special local regulations 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**, above. 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 will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this 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 above.

## E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this 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.ID, 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 water activities including swimming events and fireworks displays and may be categorically excluded from further review under paragraph 34(g)(Safety Zones) and (34)(h)(Special Local Regulations) of Figure 2–1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist is 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.

We accept anonymous comments. All comments received will be posted without change to <http://>

[www.regulations.gov](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).

**List of Subjects**

*33 CFR Part 100*

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

*33 CFR Part 165*

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 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. In § 100.120, revise the table to read as follows:

**§ 100.120 Special local regulations; marine events held in the Coast Guard sector northern New England COTP zone.**

\* \* \* \* \*

TABLE TO § 100.120

5.0	May occur May through September
5.1 Tall Ships Visiting Portsmouth .....	<ul style="list-style-type: none"> <li>• Event Type: Regatta and Boat Parade.</li> <li>• Date: A four day event from Friday through Monday.*</li> <li>• Time (Approximate): 9:00 a.m. to 8:00 p.m. each day.</li> <li>• Location: The regulated area includes all waters of Portsmouth Harbor, New Hampshire in the vicinity of Castle Island within the following points (NAD 83):                             <ul style="list-style-type: none"> <li>43°03'11" N., 070°42'26" W.</li> <li>43°03'18" N., 070°41'51" W.</li> <li>43°04'42" N., 070°42'11" W.</li> <li>43°04'28" N., 070°44'12" W.</li> <li>43°05'36" N., 070°45'56" W.</li> <li>43°05'29" N., 070°46'09" W.</li> <li>43°04'19" N., 070°44'16" W.</li> <li>43°04'22" N., 070°42'33" W.</li> </ul> </li> </ul>
6.0	June
6.1 Charlie Begin Memorial Lobster Boat Races .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event in June.*</li> <li>• Time (Approximate): 10:00 a.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of John's Island within the following points (NAD 83):                             <ul style="list-style-type: none"> <li>43°50'04" N., 069°38'37" W.</li> <li>43°50'54" N., 069°38'06" W.</li> <li>43°50'49" N., 069°37'50" W.</li> <li>43°50'00" N., 069°38'20" W.</li> </ul> </li> </ul>
6.2 Rockland Harbor Lobster Boat Races .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event in June.*</li> <li>• Time (Approximate): 9:00 a.m. to 5:00 p.m.</li> <li>• Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of the Rockland Breakwater Light within the following points (NAD 83):                             <ul style="list-style-type: none"> <li>44°05'59" N., 069°04'53" W.</li> <li>44°06'43" N., 069°05'25" W.</li> <li>44°06'50" N., 069°05'05" W.</li> <li>44°06'05" N., 069°04'34" W.</li> </ul> </li> </ul>
6.3 Windjammer Days Parade of Ships .....	<ul style="list-style-type: none"> <li>• Event Type: Tall Ship Parade.</li> <li>• Date: A one day event in June.*</li> <li>• Time (Approximate): 12:00 p.m. to 5:00 p.m.</li> <li>• Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of Tumbler's Island within the following points (NAD 83):                             <ul style="list-style-type: none"> <li>43°51'02" N., 069°37'33" W.</li> <li>43°50'47" N., 069°37'31" W.</li> <li>43°50'23" N., 069°37'57" W.</li> <li>43°50'01" N., 069°37'45" W.</li> <li>43°50'01" N., 069°38'31" W.</li> <li>43°50'25" N., 069°38'25" W.</li> </ul> </li> </ul>

TABLE TO § 100.120—Continued

6.4 Bass Harbor Blessing of the Fleet Lobster Boat Race .....	<p>43°50'49" N., 069°37'45" W.</p> <ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event in June.*</li> <li>• Time (Approximate): 10:00 a.m. to 2:00 p.m.</li> <li>• Location: The regulated area includes all waters of Bass Harbor, Maine in the vicinity of Lopaus Point within the following points (NAD 83):</li> </ul> <p>44°13'28" N., 068°21'59" W.  44°13'20" N., 068°21'40" W.  44°14'05" N., 068°20'55" W.  44°14'12" N., 068°21'14" W.</p>
7.0	July
7.1 Burlington 3rd of July Air Show .....	<ul style="list-style-type: none"> <li>• Event Type: Air Show.</li> <li>• Date: A one day event held near July 4th.*</li> <li>• Time (Approximate): 8:30 p.m. to 9:00 p.m.</li> <li>• Location: The regulated area includes all waters of Lake Champlain, Burlington, VT within the following points (NAD 83):</li> </ul> <p>44°28'51" N., 073°14'21" W.  44°28'57" N., 073°13'41" W.  44°28'05" N., 073°13'26" W.  44°27'59" N., 073°14'03" W.</p>
7.2 Moosabec Lobster Boat Races .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event held near July 4th.*</li> <li>• Time (Approximate): 10:00 a.m. to 12:30 p.m.</li> <li>• Location: The regulated area includes all waters of Jonesport, Maine within the following points (NAD 83):</li> </ul> <p>44°31'21" N., 067°36'44" W.  44°31'36" N., 067°36'47" W.  44°31'44" N., 067°35'36" W.  44°31'29" N., 067°35'33" W.</p>
7.3 The Great Race .....	<ul style="list-style-type: none"> <li>• Event Type: Rowing and Paddling Boat Race.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 10:00 a.m. to 12:30 p.m.</li> <li>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Saint Albans Bay within the following points (NAD 83):</li> </ul> <p>44°47'18" N., 073°10'27" W.  44°47'10" N., 073°08'51" W.</p>
7.4 Stonington Lobster Boat Races .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 8:00 a.m. to 3:30 p.m.</li> <li>• Location: The regulated area includes all waters of Stonington, Maine within the following points (NAD 83):</li> </ul> <p>44°08'55" N., 068°40'12" W.  44°09'00" N., 068°40'15" W.  44°09'11" N., 068°39'42" W.  44°09'07" N., 068°39'39" W.</p>
7.5 Mayor's Cup Regatta .....	<ul style="list-style-type: none"> <li>• Event Type: Sailboat Parade.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 10:00 a.m. to 4:00 p.m.</li> <li>• Location: The regulated area includes all waters of Cumberland Bay on Lake Champlain in the vicinity of Plattsburgh, New York within the following points (NAD 83):</li> </ul> <p>44°41'26" N., 073°23'46" W.  44°40'19" N., 073°24'40" W.  44°42'01" N., 073°25'22" W.</p>
7.6 The Challenge Race .....	<ul style="list-style-type: none"> <li>• Event Type: Rowing and Paddling Boat Race.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 11:00 a.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Button Bay State Park within the following points (NAD 83):</li> </ul> <p>44°12'25" N., 073°22'32" W.  44°12'00" N., 073°21'42" W.  44°12'19" N., 073°21'25" W.  44°13'16" N., 073°21'36" W.</p>
7.7 Yarmouth Clam Festival Paddle Race .....	<ul style="list-style-type: none"> <li>• Event Type: Rowing and Paddling Boat Race.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 8:00 a.m. to 4:00 p.m.</li> <li>• Location: The regulated area includes all waters in the vicinity of the Royal River outlet and Lane's Island within the following points (NAD 83):</li> </ul>

TABLE TO § 100.120—Continued

7.8 Maine Windjammer Lighthouse Parade .....	<p>43°47'47" N., 070°08'40" W.                  43°47'50" N., 070°07'13" W.                  43°47'06" N., 070°07'32" W.                  43°47'17" N., 070°08'25" W.</p> <ul style="list-style-type: none"> <li>• Event Type: Wooden Boat Parade.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 1:00 p.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of the Rockland Harbor Breakwater within the following points (NAD 83):                      44°06'14" N., 069°03'48" W.                      44°05'50" N., 069°03'47" W.                      44°06'14" N., 069°05'37" W.                      44°05'50" N., 069°05'37" W.</li> </ul>
7.9 Friendship Lobster Boat Races .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event during a weekend between the 15th of July and the 15th of August.*</li> <li>• Time (Approximate): 9:30 a.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Friendship Harbor, Maine within the following points (NAD 83):                      43°57'51" N., 069°20'46" W.                      43°58'14" N., 069°19'53" W.                      43°58'19" N., 069°20'01" W.                      43°58'00" N., 069°20'46" W.</li> </ul>
8.0	August
8.1 Eggmoggin Reach Regatta .....	<ul style="list-style-type: none"> <li>• Event Type: Wooden Boat Parade.</li> <li>• Date: A one day event on a Saturday between the 15th of July and the 15th of August.*</li> <li>• Time (Approximate): 11:00 a.m. to 7:00 p.m.</li> <li>• Location: The regulated area includes all waters of Eggmoggin Reach and Jericho Bay in the vicinity of Naskeag Harbor, Maine within the following points (NAD 83):                      44°15'16" N., 068°36'26" W.                      44°12'41" N., 068°29'26" W.                      44°07'38" N., 068°31'30" W.                      44°12'54" N., 068°33'46" W.</li> </ul>
8.2 Southport Rowgatta Rowing and Paddling Boat Race .....	<ul style="list-style-type: none"> <li>• Event Type: Rowing and Paddling Boat Race.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 8:00 a.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Sheepscot Bay and Boothbay, on the shore side of Southport Island, Maine within the following points (NAD 83):                      43°50'26" N., 069°39'10" W.                      43°49'10" N., 069°38'35" W.                      43°46'53" N., 069°39'06" W.                      43°46'50" N., 069°39'32" W.                      43°49'07" N., 069°41'43" W.                      43°50'19" N., 069°41'14" W.                      43°51'11" N., 069°40'06" W.</li> </ul>
8.3 Winter Harbor Lobster Boat Races .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 9:00 a.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Winter Harbor, Maine within the following points (NAD 83):                      44°22'06" N., 068°05'13" W.                      44°23'06" N., 068°05'08" W.                      44°23'04" N., 068°04'37" W.                      44°22'05" N., 068°04'44" W.</li> </ul>
8.4 Lake Champlain Dragon Boat Festival .....	<ul style="list-style-type: none"> <li>• Event Type: Rowing and Paddling Boat Race.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 7:00 a.m. to 5:00 p.m.</li> <li>• Location: The regulated area includes all waters of Burlington Bay within the following points (NAD 83):                      44°28'49" N., 073°13'22" W.                      44°28'41" N., 073°13'36" W.                      44°28'28" N., 073°13'31" W.                      44°28'38" N., 073°13'18" W.</li> </ul>
8.5 Merritt Brackett Lobster Boat Races .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 10:00 a.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Pemaquid Harbor, Maine within the following points (NAD 83):</li> </ul>

TABLE TO § 100.120—Continued

8.6 Multiple Sclerosis Regatta .....	<p>43°52'16" N., 069°32'10" W.                  43°52'41" N., 069°31'43" W.                  43°52'35" N., 069°31'29" W.                  43°52'09" N., 069°31'56" W.</p> <ul style="list-style-type: none"> <li>• Event Type: Regatta and Sailboat Race.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 10:00 a.m. to 4:00 p.m.</li> <li>• Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Peaks Island within the following points (NAD 83):                      43°40'24" N., 070°14'20" W.                      43°40'36" N., 070°13'56" W.                      43°39'58" N., 070°13'21" W.                      43°39'46" N., 070°13'51" W.</li> </ul>
8.7 Multiple Sclerosis Harborfest Lobster Boat/Tugboat Races .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 10:00 a.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Maine State Pier within the following points (NAD 83):                      43°40'25" N., 070°14'21" W.                      43°40'36" N., 070°13'56" W.                      43°39'58" N., 070°13'21" W.                      43°39'47" N., 070°13'51" W.</li> </ul>
8.8 Long Island Lobster Boat Race .....	<ul style="list-style-type: none"> <li>• Event Type: Power Boat Race.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 10:00 a.m. to 3:00 p.m.</li> <li>• Location: The regulated area includes all waters of Casco Bay, Maine in the vicinity of Great Ledge Cove and Dorseys Cove off the north west coast of Long Island, Maine within the following points (NAD 83):                      43°41'59" N., 070°08'59" W.                      43°42'04" N., 070°09'10" W.                      43°41'41" N., 070°09'38" W.                      43°41'36" N., 070°09'30" W.</li> </ul>

\*Date subject to change. Exact date will be posted in Notice of Enforcement and Local Notice to Mariners.

\* \* \* \* \*

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

■ 3. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. In § 165.171, revise the table to read as follows:

**§ 165.171 Safety zones for fireworks displays and swim events held in Coast Guard sector northern New England COTP zone.**

\* \* \* \* \*

TABLE TO § 165.171

6.0	June
6.1 Rotary Waterfront Days Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: Two night event on a Wednesday and Saturday in June.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:00 p.m.</li> <li>• Location: In the vicinity of the Gardiner Waterfront, Gardiner, Maine in approximate position:                      44°13'52" N., 069°46'08" W. (NAD 83).</li> </ul>
6.2 LaKermesse Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in June.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:00 p.m.</li> <li>• Location: Biddeford, Maine in approximate position:                      43°29'37" N., 070°26'47" W. (NAD 83).</li> </ul>
6.3 Windjammer Days Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in June.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position:                      43°50'38" N., 069°37'57" W. (NAD 83).</li> </ul>
7.0	July
7.1 Vinalhaven 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Firework Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> </ul>

TABLE TO § 165.171—Continued

7.2	Burlington Independence Day Fireworks .....	<ul style="list-style-type: none"> <li>• Location: In the vicinity of Grime’s Park, Vinalhaven, Maine in approximate position: 44°02’34” N., 068°50’26” W. (NAD 83).</li> <li>• Event Type: Firework Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 9:00 p.m. to 11:00 p.m.</li> <li>• Location: From a barge in the vicinity of Burlington Harbor, Burlington, Vermont in approximate position: 44°28’31” N., 073°13’31” W. (NAD 83).</li> </ul>
7.3	Camden 3rd of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:00 p.m.</li> <li>• Location: In the vicinity of Camden Harbor, Maine in approximate position: 44°12’32” N., 069°02’58” W. (NAD 83).</li> </ul>
7.4	Bangor 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of the Bangor Waterfront, Bangor, Maine in approximate position: 44°47’27” N., 068°46’31” W. (NAD 83).</li> </ul>
7.5	Bar Harbor 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of Bar Harbor Town Pier, Bar Harbor, Maine in approximate position: 44°23’31” N., 068°12’15” W. (NAD 83).</li> </ul>
7.6	Boothbay Harbor 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position: 43°50’38” N., 069°37’57” W. (NAD 83).</li> </ul>
7.7	Eastport 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 9:00 p.m. to 9:30 p.m.</li> <li>• Location: From the Waterfront Public Pier in Eastport, Maine in approximate position: 44°54’25” N., 066°58’55” W. (NAD 83).</li> </ul>
7.8	Ellis Short Sand Park Trustee Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:30 p.m. to 11:00 p.m.</li> <li>• Location: In the vicinity of York Beach, Maine in approximate position: 43°10’30” N., 070°36’22” W. (NAD 83).</li> </ul>
7.9	Hampton Beach 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:30 p.m. to 11:00 p.m.</li> <li>• Location: In the vicinity of Hampton Beach, New Hampshire in approximate position: 42°54’40” N., 070°36’25” W. (NAD 83).</li> </ul>
7.10	Moosabec 4th of July Committee Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of Beals Island, Jonesport, Maine in approximate position: 44°31’18” N., 067°36’43” W. (NAD 83).</li> </ul>
7.11	Lubec 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of the Lubec Public Boat Launch in approximate position: 44°51’52” N., 066°59’06” W. (NAD 83).</li> </ul>
7.12	Main Street Heritage Days 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of Reed and Reed Boat Yard, Woolwich, Maine in approximate position: 43°54’56” N., 069°48’16” W. (NAD 83).</li> </ul>
7.13	Portland Harbor 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:30 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of East End Beach, Portland, Maine in approximate position:</li> </ul>

## TABLE TO § 165.171—Continued

7.14 St. Albans Day Fireworks .....	<p>43°40'16" N., 070°14'44" W. (NAD 83).</p> <ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 9:00 p.m. to 10:00 p.m.</li> <li>• Location: From the St. Albans Bay dock in St. Albans Bay, Vermont in approximate position:</li> </ul>
7.15 Stonington 4th of July Fireworks .....	<p>44°48'25" N., 073°08'23" W. (NAD 83).</p> <ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of Two Bush Island, Stonington, Maine in approximate position:</li> </ul>
7.16 Southwest Harbor 4th of July Fireworks .....	<p>44°08'57" N., 068°39'54" W. (NAD 83).</p> <ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: Southwest Harbor, Maine in approximate position:</li> </ul>
7.17 Shelburne Triathlons .....	<p>44°16'25" N., 068°19'21" W. (NAD 83).</p> <ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: Up to three Saturdays throughout July and August.*</li> <li>• Time (Approximate): 7:00 a.m. to 11:00 a.m.</li> <li>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Shelburne Beach in Shelburne, Vermont within a 400 yard radius of the following point:</li> </ul>
7.18 St. George Days Fireworks .....	<p>44°21'45" N., 075°15'58" W. (NAD 83).</p> <ul style="list-style-type: none"> <li>• Event Type: Fireworks.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 8:30 p.m. to 10:30 p.m.</li> <li>• Location: The regulated area includes all waters of Inner Tenants Harbor, ME, in approximate position:</li> </ul>
7.19 Tri for a Cure Swim Clinics and Triathlon .....	<p>43°57'41.37" N., 069°12'45" W. (NAD 83).</p> <ul style="list-style-type: none"> <li>• Event Type: Swim Event</li> <li>• Date: A multi-day event held throughout July.*</li> <li>• Time (Approximate): 8:30 a.m. to 11:30 a.m.</li> <li>• Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83):</li> </ul>
7.20 Richmond Days Fireworks .....	<p>43°39'01" N., 070°13'32" W. 43°39'07" N., 070°13'29" W. 43°39'06" N., 070°13'41" W. 43°39'01" N., 070°13'36" W.</p> <ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:00 p.m.</li> <li>• Location: From a barge in the vicinity of the inner harbor, Tenants Harbor, Maine in approximate position:</li> </ul>
7.21 Colchester Triathlon .....	<p>44°08'42" N., 068°27'06" W. (NAD 83).</p> <ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 7:00 a.m. to 11:00 a.m.</li> <li>• Location: The regulated area includes all waters of Malletts Bay on Lake Champlain, Vermont within the following points (NAD 83):</li> </ul>
7.22 Peaks to Portland Swim .....	<p>44°32'57" N., 073°12'38" W. 44°32'46" N., 073°13'00" W. 44°33'24" N., 073°11'43" W. 44°33'14" N., 073°11'35" W.</p> <ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 5:00 a.m. to 1:00 p.m.</li> <li>• Location: The regulated area includes all waters of Portland Harbor between Peaks Island and East End Beach in Portland, Maine within the following points (NAD 83):</li> </ul>
7.23 Friendship Days Fireworks .....	<p>43°39'20" N., 070°11'58" W. 43°39'45" N., 070°13'19" W. 43°40'11" N., 070°14'13" W. 43°40'08" N., 070°14'29" W. 43°40'00" N., 070°14'23" W. 43°39'34" N., 070°13'31" W. 43°39'13" N., 070°11'59" W.</p> <ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of the Town Pier, Friendship Harbor, Maine in approximate position:</li> </ul>

TABLE TO § 165.171—Continued

7.24 Bucksport Festival and Fireworks .....	<p>43°58'23" N., 069°20'12" W. (NAD 83).</p> <ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of the Verona Island Boat Ramp, Verona, Maine, in approximate position: 44°34'9" N., 068°47'28" W. (NAD 83).</li> </ul>
7.25 Nubble Light Swim Challenge .....	<ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: A one day event in July.*</li> <li>• Time (Approximate): 9:00 a.m. to 12:30 p.m.</li> <li>• Location: The regulated area includes all waters around Cape Neddick, Maine and within the following coordinates: 43°10'28" N., 070°36'26" W. 43°10'34" N., 070°36'06" W. 43°10'30" N., 070°35'45" W. 43°10'17" N., 070°35'24" W. 43°09'54" N., 070°35'18" W. 43°09'42" N., 070°35'37" W. 43°09'51" N., 070°37'05" W.</li> </ul>
7.26 Paul Coulombe Anniversary Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one day event in July.*</li> <li>• Time: 8:00 p.m. to 11:30 p.m.</li> <li>• Location: In the vicinity of Pratt Island, Southport, ME, in approximate position: 43°48'44" N., 069°41'11" W. (NAD 83).</li> </ul>
7.27 Castine 4th of July Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: One night event in July.*</li> <li>• Time (Approximate): 9:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of the town dock in the Castine Harbor, Castine, Maine in approximate position: 44°23'10" N., 068°47'28" W. (NAD 83).</li> </ul>
8.0	August
8.1 Westerlund's Landing Party Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of Westerlund's Landing in South Gardiner, Maine in approximate position: 44°10'19" N., 069°45'24" W. (NAD 83).</li> </ul>
8.2 York Beach Fire Department Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 8:30 p.m. to 11:30 p.m.</li> <li>• Location: In the vicinity of Short Sand Cove in York, Maine in approximate position: 43°10'27" N., 070°36'25" W. (NAD 83).</li> </ul>
8.3 North Hero Air Show .....	<ul style="list-style-type: none"> <li>• Event Type: Air Show</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 10:00 a.m. to 5:00 p.m.</li> <li>• Location: In the vicinity of Shore Acres Dock, North Hero, Vermont in approximate position: 44°48'24" N., 073°17'02" W. 44°48'22" N., 073°16'46" W. 44°47'53" N., 073°16'54" W. 44°47'54" N., 073°17'09" W.</li> </ul>
8.4 Islesboro Crossing Swim .....	<ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 6:00 a.m. to 11:00 a.m.</li> <li>• Location: West Penobscot Bay from Ducktrap Beach, Lincolnville, ME to Grindel Point, Islesboro, ME, in approximate position: 44°17'44" N., 069°00'11" W. 44°16'58" N., 068°56'35" W.</li> </ul>
8.5 Paul Columbe Party Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 9:00 p.m. to 10:30 p.m.</li> <li>• Location: From a barge in the vicinity of Pratt Island, Southport, Maine in approximate position: 43°48'69" N., 069°41'18" W. (NAD 83).</li> </ul>
8.6 Casco Bay Island Swim/Run .....	<ul style="list-style-type: none"> <li>• Event Type: Swim/Run Event.</li> <li>• Date: A one day event in August.*</li> <li>• Time (Approximate): 7:30 a.m. to 1:00 p.m.</li> <li>• Location: All waters of Casco Bay, Maine in the vicinity of Casco Bay Island archipelago and within the following coordinates (NAD 83): 43°42'47" N., 070°07'07" W.</li> </ul>

TABLE TO § 165.171—Continued

8.7 Port Mile Swim .....	<p>43°38'09" N., 070°11'57" W.  43°34'57" N., 070°12'55" W.  43°41'31" N., 070°11'37" W.  43°43'25" N., 070°08'25" W.</p> <ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: A one day event August.*</li> <li>• Time (Approximate): 7:00 a.m. to 9:00 a.m.</li> <li>• Location: All waters of Casco Bay, Maine in the vicinity of East End Beach within the following points (NAD 83):  43°40'09" N., 070°14'27" W.  43°40'05" N., 070°14'01" W.  43°40'21" N., 070°14'09" W.</li> </ul>
8.8 Challenge Maine Triathlon .....	<ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: A one day event August.*</li> <li>• Time (Approximate): 6:00 a.m. to 08:30 a.m.</li> <li>• Location: All waters of Saco Bay, Maine in the vicinity of Old Orchard Beach within the following points (NAD 83):  43°30'57" N., 070°22'22" W.  43°30'48" N., 070°21'58" W.  43°30'29" N., 070°22'43" W.  43°30'19" N., 070°22'21" W.</li> </ul>
9.0	September
9.1 Windjammer Weekend Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one night event in September.*</li> <li>• Time (Approximate): 8:00 p.m. to 9:30 p.m.</li> <li>• Location: From a barge in the vicinity of Northeast Point, Camden Harbor, Maine in approximate position:  44°12'10" N., 069°03'11" W. (NAD 83).</li> </ul>
9.2 Eastport Pirate Festival Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one night event in September.*</li> <li>• Time (Approximate): 7:00 p.m. to 10:00 p.m.</li> <li>• Location: From the Waterfront Public Pier in Eastport, Maine in approximate position:  44°54'17" N., 066°58'58" W. (NAD 83).</li> </ul>
9.3 The Lobsterman Triathlon .....	<ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: A one day event in September.*</li> <li>• Time (Approximate): 8:00 a.m. to 11:00 a.m.</li> <li>• Location: The regulated area includes all waters in the vicinity of Winslow Park in South Freeport, Maine within the following points (NAD 83):  43°47'59" N., 070°06'56" W.  43°47'44" N., 070°06'56" W.  43°47'44" N., 070°07'27" W.  43°47'57" N., 070°07'27" W.</li> </ul>
9.4 Eliot Festival Day Fireworks .....	<ul style="list-style-type: none"> <li>• Event Type: Fireworks Display.</li> <li>• Date: A one night event in September.*</li> <li>• Time (Approximate): 8:00 p.m. to 10:30 p.m.</li> <li>• Location: In the vicinity of Eliot Town Boat Launch, Eliot, Maine in approximate position:  43°08'56" N., 070°49'52" W. (NAD 83).</li> </ul>
9.5 Lake Champlain Swimming Race .....	<ul style="list-style-type: none"> <li>• Event Type: Swim Event.</li> <li>• Date: A one day event in September.</li> <li>• Time (Approximate): 9:00 a.m. to 3 p.m.</li> <li>• Location: Essex Beggs Point Park, Essex, NY, to Charlotte Beach, Charlotte, VT.  44°18'32" N., 073°20'52" W.  44°20'03" N., 073°16'53" W.</li> </ul>

\*Date subject to change. Exact date will be posted in Notice of Enforcement and Local Notice to Mariners.

Dated: March 22, 2017.

**M.A. Barody,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.*

[FR Doc. 2017-07514 Filed 4-12-17; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 36**

RIN 2900-AP62

**Loan Guaranty: Revisions to Allowable Charges and Fees Assessed Incident to VA-Guaranteed Home Loans****AGENCY:** Department of Veterans Affairs.**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The Department of Veterans Affairs (VA) Loan Guaranty Service (LGY) is currently reviewing its regulations governing the allowable expenses that a veteran may pay or be charged in connection with obtaining a VA-guaranteed home loan. By issuing this advanced notice of proposed rulemaking, LGY seeks comments on how the public believes VA should approach this undertaking. Although LGY identifies specific issues for discussion below, it encourages commenters to discuss any issue related to improving these specific regulations.

**DATES:** Comments must be received on or before June 12, 2017.

**ADDRESSES:** Written comments may be submitted through [www.regulations.gov](http://www.regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (OOREG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP62—Loan Guaranty: Revisions to Allowable Charges and Fees Assessed Incident to VA-Guaranteed Home Loans.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** John Bell, III, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (262), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-8786. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:****I. Background**

VA has promulgated a list of permissible charges and fees a borrower may be charged or may pay incident to obtaining a VA-guaranteed home loan. See 38 CFR 36.4313. In 1948, VA published its rule regulating charges and fees which was codified at the former 38 CFR 36.4312. See 13 FR 7275, Nov. 27, 1948. That rule set forth the costs and expenses that loan proceeds could be used to pay, but was silent on whether a veteran might be allowed to pay such costs and expenses out of his or her own cash reserves. Id. Under the rule, borrowers could use proceeds from the loan to pay any cost or expense normally paid under local lending customs, except for certain brokerage and service charges. Id.

In 1954, VA substantially altered the rule's regulatory scheme. Instead of permitting lenders to charge costs and expenses normally paid under local lending customs, VA restricted the types of charges and fees veterans were allowed to pay by expressly enumerating the types allowed. See 19 FR 6717, Oct. 19, 1954. VA instituted this rule amendment in order to protect veterans from what are commonly known as “junk fees”.

The current charges and fees rule, now codified at 38 CFR 36.4313, is substantially similar to the 1954 version. While VA has amended the rule to modify the types of permissible charges and fees in the intervening years, the rule still retains the express enumeration scheme established by the 1954 version. In other words, the current rule protects veterans from having to satisfy any charge or fee not expressly allowed by the schedule codified at 38 CFR 36.4313(d). The rule, however, does allow a lender to charge a veteran, and for the veteran to pay, an origination fee of up to 1 percent of the loan amount, provided that the 1 percent fee be charged in lieu of all other fees permitted by the schedule. See 38 CFR 36.4313(d)(2). Compared with a conventional housing loan transaction, the fees the rule permits to be charged to veterans are relatively limited. Consequently, in transacting a sale with a VA-guaranteed loan borrower, sellers and lenders must bear many of the customary real estate transaction expenses.

Since implementation, the rule has protected many veterans from having to incur unreasonable closing costs. However, the home buying process has changed significantly since VA last implemented substantive changes to the permissible fee schedule. In recent

years, some veterans and their representatives have complained to VA that certain provisions of the rule can be detrimental to veterans' bargaining position during real estate negotiations. These parties have asserted that VA-guaranteed loan borrowers are sometimes unable to compete with other offerors whose financing options are not restricted by similar regulatory constraints. VA recognizes that these constraints can contribute to sellers' decisions to accept other offers or lead lenders to charge higher interest rates to offset losses.

VA will continue to safeguard the best interests of veteran homebuyers by protecting them from excessive and unreasonable closing costs. However, VA recognizes that an overly restrictive list of permissible charges and fees might, in certain circumstances, motivate market participants to avoid financing or selling homes to veterans.

**II. Questions for Comment**

In order to strike the appropriate balance between making it easier for veterans to utilize their home loan benefits and protecting them from unreasonable charges and fees, VA is considering ways to revise the list of acceptable charges and fees specified by the schedule codified at 38 CFR 36.4313(d). VA invites responses to the following questions:

1. What are ways that VA can protect veterans from incurring excessive closing costs, without being overly restrictive?
2. Under the current rule, VA distinguishes between a “fee” and a “charge” but does not define the terms. VA invites comments as to whether the public finds the distinction meaningful. Should VA eliminate the distinction? If not, how should VA define the terms?
3. Does the term “origination fee” accurately reflect what a borrower would pay to a lender in order to originate a loan? What do veterans and lenders view as the purpose of an origination fee?
4. How should VA identify which closing costs are acceptable for the veteran to pay, which are acceptable for another party but not a veteran to pay, and which, if any, should be prohibited?
5. To what extent, if at all, should VA limit third-party charges or fees to the actual costs of the service provided? Alternatively, should VA permit borrowers, sellers, and lenders to negotiate their own bargains?

6. To what extent, if at all, should local real estate customs affect (i) the types and amounts of closing costs that VA allows and (ii) which party is responsible for paying such costs?

7. In a non-VA-guaranteed loan transaction, how are attorneys' fees usually paid when the attorney is not representing the veteran? Should VA allow a borrower to pay an attorney fee if the attorney does not have a fiduciary duty to the borrower?

8. Should VA allow lenders to charge veterans differently depending upon the type of transaction (e.g., purchase, cash-out refinance, streamlined refinance, etc.)? If so, what are the justifications for the different pricing?

9. What other lending programs, whether public or private, might VA consider as models in considering amendments to VA's charges and fees rule? What characteristics make these programs useful analogs to the VA-guaranteed loan program?

10. What other information should VA consider in determining the types of expenses a veteran should be expected to pay to close a VA-guaranteed loan?

11. What charges or fees should VA allow veterans to pay in order to close a construction or rehabilitation/renovation loan?

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on March 17, 2017, for publication.

Dated: March 17, 2017.

#### Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2017-07492 Filed 4-12-17; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapters I, IV, V, VI, and VII

[EPA-HQ-OA-2017-0190; FRL-9961-60-OP]

#### Evaluation of Existing Regulations

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Request for comment.

**SUMMARY:** In accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda," EPA is seeking input on regulations that may be appropriate for repeal, replacement, or modification.

**DATES:** Comments must be received on or before May 15, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OA-2017-0190 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** For further information on this document, please contact Sarah Rees, Director, Office of Regulatory Policy and Management, Office of Policy, 1200 Pennsylvania Avenue NW., Mail Code 1803A, Washington, DC 20460, Phone: (202) 564-1986; [Laws-Regs@epa.gov](mailto:Laws-Regs@epa.gov).

**SUPPLEMENTARY INFORMATION:** On February 24, 2017, President Trump signed Executive Order 13777, "Enforcing the Regulatory Reform Agenda," which established a federal policy "to alleviate unnecessary regulatory burdens" on the American people. Section 3(a) of the EO directs federal agencies to establish a Regulatory Reform Task Force (Task Force). One of the duties of the Task Force is to evaluate existing regulations and "make recommendations to the agency head regarding their repeal, replacement, or modification." The EO further asks that each Task Force "attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) are outdated, unnecessary, or ineffective;

(iii) impose costs that exceed benefits;

(iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriates Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or

(vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified."

Section 3(e) of the E.O. calls on the Task Force to "seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations" on regulations that meet some or all of the criteria above. Through this notice, EPA is soliciting such input from the public to inform its Task Force's evaluation of existing regulations. EPA requests that commenters be as specific as possible, include any supporting data or other information such as cost information, provide a **Federal Register** (FR) or Code of Federal Regulations (CFR) citation when referencing a specific regulation, and provide specific suggestions regarding repeal, replacement or modification. Although the agency will not respond to individual comments, the EPA values public feedback and will give careful consideration to all input that it receives. EPA will also be conducting outreach on this same topic. Information about opportunities for engagement with the agency will be available on <https://www.epa.gov/laws-regulations/regulatory-reform>.

Dated: April 10, 2017.

#### Samantha K. Dravis,

Regulatory Reform Officer and Associate Administrator, Office of Policy.

[FR Doc. 2017-07500 Filed 4-12-17; 8:45 am]

BILLING CODE 6560-50-P

# Notices

Federal Register

Vol. 82, No. 70

Thursday, April 13, 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

### Forest Service

#### Superior National Forest; Minnesota; Application for Withdrawal

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice of intent to extend the scoping comment period for preparation of an environmental impact statement.

**SUMMARY:** The Superior National Forest published a Notice of Intent in the *Federal Register* on January 13, 2017, describing a submitted application to the Secretary of Interior proposing a withdrawal of approximately 234,328 acres of National Forest System (NFS) lands, for a 20-year term, within the Rainy River Watershed on the Superior National Forest from disposition under United States mineral and geothermal leasing laws, subject to valid existing rights. This proposal will also include an amendment to the Superior National Forest Land and Resource Management Plan to reflect this withdrawal. This notice extends the scoping comment period by 120 days.

The purpose of the withdrawal request is protection of the natural resources and waters located on NFS lands from the potential adverse environmental impacts arising from exploration and development of fully Federally-owned minerals conducted pursuant to the mineral leasing laws within the Rainy River Watershed that flow into the Boundary Waters Canoe Area Wilderness (BWCAW) and the Boundary Waters Canoe Area Wilderness Mining Protection Area (MPA) in northeastern Minnesota. The USFS acknowledges this proposed request subjects these NFS lands to temporary segregation for up to 2 years from entry under the United States mineral and geothermal leasing laws. The lands have been and will remain open to such forms of use and

disposition as may be allowed by law on National Forest System lands including the disposition of mineral materials. The USFS recognizes that any segregation or withdrawal of these lands will be subject to valid existing rights and therefore inapplicable to private lands owned in fee, private mineral estates, and private fractional minerals interests. This notice also gives the public an opportunity to comment on the proposed request for withdrawal, and announces the opportunity for a future public meeting.

**DATES:** Comments concerning the proposed request for withdrawal and the scope of the environmental analysis must be received by August 11, 2017. This revised Notice coincides with the Bureau of Land Management's (BLM) "Notice of Application for Withdrawal and Notification of Public Meeting" announced in the *Federal Register* on January 19, 2017.

The draft environmental impact statement is expected Spring 2020 and the final environmental impact statement is expected January 2021.

**ADDRESSES:** Address written comments regarding the environmental effects associated with this proposed request for withdrawal to Connie Cummins, Forest Supervisor, Superior National Forest. Written comments are to be mailed to 8901 Grand Avenue Place, Duluth, MN 55808-1122. Comments may also be sent via email to [comments-eastern-superior@fs.fed.us](mailto:comments-eastern-superior@fs.fed.us) or via facsimile to 218-626-4398.

**FOR FURTHER INFORMATION CONTACT:** Matt Judd, Superior National Forest (218-626-4382). The Superior National Forest Web site (<https://www.fs.usda.gov/projects/superior/landmanagement/projects>) also contains information relative to this proposed request for withdrawal.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. This relay service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The USFS has submitted an application on January 5, 2017 to the Secretary of the Interior proposing to withdraw the identified lands from disposition under United

States mineral and geothermal leasing laws (subject to valid existing rights) for a period of 20 years.

All the NFS Lands identified in this application are described in Appendix A and displayed on a map in Appendix B. This application is available upon request at the Superior National Forest office (8901 Grand Ave Place, Duluth, MN 55808) or their Web site (<https://www.fs.usda.gov/projects/superior/landmanagement/projects>). The lands depicted on this map include NFS lands in the townships below, and all non-Federal lands within the exterior boundaries described below that are subsequently acquired by the Federal government to the boundary of the Boundary Waters Canoe Area Wilderness (BWCAW) and the Boundary Waters Canoe Area Wilderness Mining Protection Area (MPA).

#### National Forest System Lands

##### *Superior National Forest*

4th Principal Meridian, Minnesota

Tps. 61 and 62 N., Rs. 5 W.,

Tps. 60 to 62 N., Rs. 6 W.,

Tps. 59 and 61 N., Rs. 7 W.,

Tps. 59 to 61 N., Rs. 8 W., to the boundary of the BWCAW

Tps. 58 to 61 N., Rs. 9 W., to the boundary of the BWCAW

Tps. 57 to 62 N., Rs. 10 W.,

Tps. 57 to 63 N., Rs. 11 W.,

Tp. 59 N., R. 12 W.,

Tps. 61 to 63 N., Rs. 12 W.,

Tps. 61 to 63 N., Rs. 13 W.,

Tp. 63 N., R. 15 W.,

Tp. 63 N., R. 16 W.,

Tps. 65 to 67 N., Rs. 16 W.,

Tp. 64 N., R. 17 W.,

The areas described contain approximately 234,328 acres of NFS lands that overlay Federally-owned minerals in Cook, Lake, and Saint Louis Counties, Minnesota located adjacent to the BWCAW and the MPA.

#### Purpose and Need for Action

The purpose of this withdrawal request is protection of NFS lands located in the Rainy River Watershed, and preservation of NFS lands within the BWCAW, from the potential adverse environmental impacts arising from exploration and development of fully Federally-owned minerals conducted pursuant to the Federal mineral leasing laws.

The 234,328 acres of Federal land in this proposed request for withdrawal are located within the Rainy River watershed on the Superior National

Forest and are adjacent to the BWCAW and MPA. There is known interest in the development of hardrock minerals that have been found—and others that are thought to exist—in sulfide-bearing rock within this portion of the Rainy River Watershed. Any development of these mineral resources could ultimately result in the creation of permanently stored waste materials and other conditions upstream of the BWCAW and the MPA with the potential to generate and release water with elevated levels of acidity, metals, and other potential contaminants. Additionally, any failure of mitigation measures, containment facilities or remediation efforts at mine sites and their related facilities located upstream of the BWCAW and the MPA could lead to irreversible impacts upon natural resources and the inability to meet the purposes for the designation of the BWCAW and the MPA specified by Sec. 2 of Public Law 95–495, 92 Stat. 1649 (1978) and the inability to comply with section 4(b) of the 1964 Wilderness Act. These concerns are exacerbated by the likelihood that perpetual maintenance of waste storage facilities along with the perpetual treatment of water discharge emanating from the waste storage facilities and the mines themselves would likely be required to ameliorate these adverse effects. Yet, it is not at all certain that such maintenance and treatment can be assured over many decades.

#### Proposed Action

The United States Forest Service (USFS) has submitted an application to the Secretary of Interior proposing a withdrawal, for a 20-year term, of approximately 234,328 acres of NFS lands within the Rainy River Watershed on the Superior National Forest from disposition under United States mineral and geothermal leasing laws, subject to valid existing rights. This proposal will also include an amendment to the Superior National Forest Land and Resource Management Plan to reflect this withdrawal.

#### Possible Alternatives

In addition to the USFS proposal, a “no action” alternative will be analyzed, and no additional alternatives have been identified at this time. No alternative sites are feasible because the lands subject to the withdrawal application are the lands for which protection is sought from the impacts of exploration and development under the United States mineral and geothermal leasing laws.

#### Lead and Cooperating Agencies

The USFS will be the lead agency. The USFS will designate the BLM as a cooperating agency. The BLM shall independently evaluate and review the draft and final environmental impact statements and any other documents needed for the Secretary of Interior to make a decision on the proposed withdrawal.

#### Responsible Official

Forest Supervisor, Superior National Forest.

#### Nature of Decision To Be Made

The Responsible Official will complete an environmental impact statement, documenting the information and analysis necessary to support a decision on withdrawal, and to support an amendment to the Superior National Forest Land and Resource Management Plan.

The Secretary of Interior is the authorized official to approve a proposal for withdrawal.

The Responsible Official is the authorized official to approve an amendment to the Superior National Forest Land and Resource Management Plan to reflect the proposed withdrawal.

#### Scoping Process

This notice of intent revises the scoping period in preparing this environmental impact statement. The USFS and Bureau of Land Management (BLM) held a public meeting within the initial 90-day comment period to gather public input on the proposed request for withdrawal. This meeting was held at the Duluth Entertainment and Convention Center on March 16, 2017 in Duluth, MN. The scoping period will be extended an additional 120 days to accommodate the immense public interest and complexity of the proposal. Within the first 30 days, more than 30,000 written comments were received on the withdrawal proposal. The scoping period extension will also allow more time for additional public meetings. At least one additional public meeting will be scheduled on the Iron Range before the close of the scoping period. Further opportunities for public participation will be provided upon publication of the Draft EIS, including a minimum 45-day public comment period. A plan amendment is subject to pre-decisional objection procedures at 36 CFR 219, subpart B.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency’s preparation of the environmental impact statement. Therefore, comments should be

provided prior to the close of the comment period and should clearly articulate the reviewer’s concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: April 5, 2017.

**Robert M. Harper,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017–07489 Filed 4–12–17; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Information Collection; Request for Comment; National Visitor Use Monitoring

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, National Visitor Use Monitoring (0596–0110).

**DATES:** Comments must be received in writing on or before June 12, 2017 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Dr. Donald B.K. English, Recreation, Heritage, and Volunteer Resources, Mailstop 1125, Forest Service, USDA, 1400 Independence Ave. SW., Washington, DC 20250–1125.

Comments also may be submitted via facsimile to 202–205–1145 or by email to: [denglish@fs.fed.us](mailto:denglish@fs.fed.us). The public may inspect comments received at the Office of the Director, Recreation, Heritage, and Volunteer Resources, 5th Floor South West, Sidney R. Yates Federal Building, 201 14th Street SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to (202) 205–9595 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald B.K. English, Recreation, Heritage, and Volunteer Resources staff, at 202–205–9595. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339,

between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title:* National Visitor Use Monitoring.

*OMB Number:* 0596-0110.

*Expiration Date of Approval:* August 31, 2017.

*Type of Request:* Extension with revision.

*Abstract:* The Government Performance and Results Act of 1993 requires that Federal agencies establish measurable goals and monitor their success at meeting those goals. Two of the items the Forest Service must measure are: (1) The number of visits that occur on the National Forest System lands for recreation and other purposes, and (2) the views and satisfaction levels of recreational visitors to National Forest System lands about the services, facilities, and settings. The Agency receives requests for this kind of information from a variety of organizations, including Congressional staffs, newspapers, magazines, and recreational trade organizations.

The data from this collection provides vital information for strategic planning efforts, decisions regarding allocation of resources, and revisions of land and resource management plans for national forests. It provides managers with reliable estimates of the number of recreational visitors to a national forest, activities of those visitors (including outdoor physical activities), customer satisfaction, and visitor values. The knowledge gained from this effort helps identify recreational markets as well as the economic contributions visitors' spending has on economic areas around forest lands. For the Forest Service, the collection is designed for a five-year cycle of coverage across all national forests. Conducting the collection less frequently puts information updates out of cycle with forest planning and other data preparation and reporting activities.

At recreation sites or access points, agency personnel or contractors will conduct onsite interviews of visitors as they complete their visit. Interviewers will ask about the purpose and length of the visit, the trip origin, activities, annual visitation rates, trip-related spending patterns, use of recreation facilities, satisfaction with agency services and facilities, and the composition of the visiting party. Primary analysis of the information for the Forest Service and partnering agencies will be performed by Forest Service staff in the Washington Office and by scientists in one or more of the agency's research stations.

*Estimate of Annual Burden:* 9 minutes (average).

*Type of Respondents:* Visitors to lands and waters managed by the U.S. Forest Service.

*Estimated Annual Number of Respondents:* 45,000.

*Estimated Annual Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* 6,400 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden 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 to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: March 30, 2017.

**Jeanne M. Higgins,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017-07488 Filed 4-12-17; 8:45 am]

**BILLING CODE 3411-15-P**

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

**[B-84-2016]**

**Foreign-Trade Zone (FTZ) 21—  
Dorchester County, South Carolina;  
Authorization of Production Activity;  
AGRU America Charleston, LLC  
(Industrial Pipes); North Charleston,  
South Carolina**

On December 9, 2016, the South Carolina State Ports Authority, grantee of FTZ 21, submitted a notification of proposed production activity to the FTZ Board on behalf of AGRU America Charleston, LLC, within Site 5, in North Charleston, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including

notice in the **Federal Register** inviting public comment (81 FR 91115, December 16, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: April 10, 2017.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2017-07490 Filed 4-12-17; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

**[Order No. 2032]**

**Approval of Subzone Status; Wacker Polysilicon North America LLC, Charleston, Tennessee**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

*Whereas*, the Chattanooga Chamber Foundation, grantee of Foreign-Trade Zone 134, has made application to the Board for the establishment of a subzone at the facility of Wacker Polysilicon North America LLC, located in Charleston, Tennessee (FTZ Docket B-71-2016, docketed October 28, 2016);

*Whereas*, notice inviting public comment has been given in the **Federal Register** (81 FR 76331, November 2, 2016) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore*, the Board hereby approves subzone status at the facility of Wacker Polysilicon North America LLC, located in Charleston, Tennessee

(Subzone 134B), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: March 30, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2017-07428 Filed 4-12-17; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-979, A-570-010]

#### Antidumping Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China and Antidumping Duty Orders on Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Results of Changed Circumstances Reviews

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

**SUMMARY:** On March 6, 2017, the Department of Commerce (the "Department") published its notice of initiation and preliminary results of changed circumstances reviews ("CCRs") of the antidumping duty ("AD") orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, ("solar cells") from the People's Republic of China ("PRC") and certain crystalline silicon photovoltaic products ("solar products") from the PRC (*Preliminary Results*).

The Department preliminarily determined that Hanwha Q CELLS (Qidong) Co. Ltd. ("Q CELLS Qidong") is the successor-in-interest to Hanwha SolarOne (Qidong) Co., Ltd. ("SolarOne Qidong") for purposes of the AD orders on solar cells and solar products from the PRC and that Hanwha Q CELLS Hong Kong Limited ("Q CELLS Hong Kong") is the successor-in-interest to Hanwha SolarOne Hong Kong Limited ("SolarOne Hong Kong") for purposes of the AD order on solar products from the PRC. As such, the Department preliminarily determined that Q CELLS Qidong is entitled to SolarOne Qidong's AD cash deposit rates for purposes of the AD orders on solar cells and solar products from the PRC and Q CELLS Hong Kong is entitled to SolarOne Hong Kong's AD cash deposit rate for

purposes of the AD order on solar products from the PRC.

We provided interested parties 14 days from the date of publication of the *Preliminary Results* to submit case briefs or request a hearing. No interested parties submitted case briefs or requested a hearing.

For these final results, the Department finds that Q CELLS Qidong is the successor-in-interest to SolarOne Qidong for purposes of the AD orders on solar cells and solar products from the PRC and Q CELLS Hong Kong is the successor-in-interest to SolarOne Hong Kong for purposes of the AD order on solar products from the PRC.

**DATES:** Effective April 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1593.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 7, 2012, the Department published the AD order on solar cells from the PRC in the **Federal Register**.<sup>1</sup> On February 18, 2015, the Department published the AD order on solar products from the PRC in the **Federal Register**.<sup>2</sup> On September 8, 2016, the Department received a request on behalf of Q CELLS Hong Kong and Q CELLS Qidong for expedited CCRs to establish Q CELLS Hong Kong as the successor-in-interest to SolarOne Hong Kong<sup>3</sup> and to establish Q CELLS Qidong as the successor-in-interest to SolarOne Qidong for purposes of the of the AD and countervailing duty ("CVD") orders on solar cells from the PRC and solar products from the PRC.<sup>4</sup> On September 23, 2016, Q CELLS Hong Kong and Q CELLS Qidong withdrew their request for CCRs with respect to the CVD orders

<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012) ("*Solar Cells Order*").

<sup>2</sup> See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015) ("*Solar Products Order*").

<sup>3</sup> In the initiation and preliminary results notice, the Department inadvertently referred to this company as SolarOne Hong Kong Limited rather than the full company name, Hanwha SolarOne Hong Kong Limited.

<sup>4</sup> See letter on the solar cells and solar products AD and CVD orders from Q CELLS Hong Kong and Q CELLS Qidong to the Department regarding, "Changed Circumstances Review Request" (September 8, 2016) ("CCR Request").

on solar cells and solar products from the PRC.<sup>5</sup> The Department received comments on October 11, 2016 from SolarWorld Americas, Inc. ("Petitioner") concerning Q CELLS Hong Kong and Q CELLS Qidong's CCR request.<sup>6</sup> On February 24, 2017, the Department initiated the instant CCRs and made a preliminary finding that: Q CELLS Qidong is the successor-in-interest to SolarOne Qidong and is entitled to SolarOne Qidong's AD cash deposit rates with respect to the AD orders on solar cells and solar products from the PRC and Q CELLS Hong Kong is the successor-in-interest to SolarOne Hong Kong and is entitled to SolarOne Hong Kong's AD cash deposit rate with respect to the AD order on solar products from the PRC.<sup>7</sup> We provided interested parties 14 days from the date of publication of the *Preliminary Results* to submit case briefs. No interested parties submitted case briefs or requested a hearing.

##### Scope of the Orders

The merchandise covered by the *Solar Cells Order* is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building integrated materials. Imports of the merchandise subject to the *Solar Cells Order* are currently classified under the following subheadings of the Harmonized Tariff Schedule of the United States ("HTSUS"): 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000.<sup>8</sup>

<sup>5</sup> See letter from Q CELLS Hong Kong and Q CELLS Qidong to the Department regarding "Withdrawal of Changed Circumstances Review Request Regarding Case Nos. C-570-980 and C-570-011."

<sup>6</sup> See Letter from SolarWorld Americas, Inc. to the Department regarding, "Comments on Hanwha Q Cells Hong Kong Limited and Hanwha Q CELLS (Qidong) Co., Ltd.'s Request for a Changed Circumstances Review" (October 11, 2016) ("Petitioner's Comments").

<sup>7</sup> See *Initiation and Preliminary Results of Changed Circumstances Reviews: Antidumping Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China and Antidumping Duty Order on Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China*; 82 FR 12558 (March 6, 2017) ("*Preliminary Results*") and accompanying Preliminary Decision Memorandum.

<sup>8</sup> For a complete description of the scopes of these orders, see the Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from James Maeder, Senior Director, Office I for Antidumping and Countervailing Duty Operations, "Initiation and Preliminary Results of Changed Circumstances

The merchandise covered by the *Solar Products Order* is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. Subject merchandise includes modules, laminates and/or panels assembled in the PRC consisting of crystalline silicon photovoltaic cells produced in a customs territory other than the PRC. Imports of the merchandise subject to the *Solar Products Order* are currently classified under the following subheadings of the HTSUS: 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of these orders is dispositive.<sup>9</sup>

### Final Results of the Changed Circumstances Reviews

Because no interested party submitted comments on, and the record contains no information or evidence that calls into question, the *Preliminary Results*, the Department adopts the analysis from the *Preliminary Results* and Preliminary Decision Memorandum and continues to find that Q CELLS Qidong is the successor-in-interest to SolarOne Qidong with respect to the AD orders on solar cells and solar products from the PRC, and that Q CELLS Hong Kong is the successor-in-interest to SolarOne Hong Kong with respect to the AD order on solar products from the PRC. Therefore, Q CELLS Qidong is entitled to the AD cash deposit rate of SolarOne Qidong for purposes of the AD orders on solar cells and solar products from the PRC, and Q CELLS Hong Kong is entitled to the AD cash deposit rate of SolarOne Hong Kong for purposes of the AD order on solar products from the PRC.

### Instructions to U.S. Customs and Border Protection

Based on these final results, we intend to instruct U.S. Customs and Border Protection (“CBP”) to collect estimated duties for all shipments of solar cells from the PRC and solar products from the PRC exported and produced by Q CELLS Qidong and entered, or withdrawn from warehouse,

for consumption on or after the publication date of this notice in the **Federal Register** at the current AD cash deposit rates for SolarOne Qidong. Those cash deposit rates are 13.18 percent<sup>10</sup> and 30.06 percent,<sup>11</sup> respectively.<sup>12</sup>

The Department furthermore intends to instruct CBP to collect estimated duties for all shipments of solar products from the PRC exported by Q CELLS Hong Kong and produced by Q CELLS Qidong, and entered or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the current AD cash deposit rate for SolarOne Hong Kong (*i.e.*, 30.06 percent).<sup>13</sup> These cash deposit

<sup>10</sup> See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Citric Acid and Citrate Salts From the People's Republic of China; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China; Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China; High Pressure Steel Cylinders From the People's Republic of China; Multilayered Wood Flooring From the People's Republic of China; Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China; Utility Scale Wind Towers From the People's Republic of China*; 80 FR 48812 (August 14, 2015).

<sup>11</sup> See *Solar Products Order*, 80 FR 8592 (February 18, 2015), and *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*; 79 FR 76970-01 (December 23, 2014) where the Department indicated that it would instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through. The 30.06 rate is the adjusted rate.

<sup>12</sup> SolarOne Hong Kong and SolarOne Qidong's separate rates in both orders are combination rates. In the solar products antidumping duty proceeding, SolarOne Hong Kong's separate rate is classified under case number A-570-010-017, where SolarOne Hong Kong is identified as the exporter and SolarOne Qidong is identified as the manufacturer. In the same proceeding, SolarOne Qidong has a separate rate classified under case number A-570-010-016, where SolarOne Qidong is identified as the exporter and manufacturer. In the solar cells proceeding, SolarOne Hong Kong does not have a separate rate and SolarOne Qidong does have a separate rate, classified under case number A-570-979-014, where SolarOne Qidong is identified as the exporter and manufacturer. In updating these combination rates, we intend to revise both the names of the exporters and manufacturer consistent with our final determination that Q CELLS Hong Kong and Q CELLS Qidong are the successors-in-interest to SolarOne Hong Kong and SolarOne Qidong, respectively.

<sup>13</sup> See *Solar Products Order*, 80 FR 8592 (February 18, 2015), and *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*; 79 FR 76970-01 (December 23, 2014) where the Department indicated that it would instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where

requirements shall remain in effect until further notice.

### Notification to Interested Parties

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

We are issuing and publishing this final results notice in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.221(c)(3).

Dated: April 7, 2017.

**Ronald K. Lorentzen**,  
Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017-07491 Filed 4-12-17; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-881]

### Malleable Cast Iron Pipe Fittings From the People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review; 2015-2016

**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 antidumping duty order on malleable cast iron pipe fittings from the People's Republic of China (“PRC”) for four companies. Based on a timely withdrawal of request for review, we are rescinding this administrative review with respect to two companies, Langfang Pannext Pipe Fitting Co., Ltd. (“Pannext”) and Jinan Meide Casting Co., Ltd. (“JMC”).

**DATES:** Effective April 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Keith Haynes, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

appropriate for export subsidies and estimated domestic subsidy pass-through. The 30.06 rate is the adjusted rate.

Reviews: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China and Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,” (“Preliminary Decision Memorandum”).

<sup>9</sup> *Id.*

Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5139.

#### SUPPLEMENTARY INFORMATION:

#### Background

On December 1, 2016, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on malleable cast iron pipe fittings from the PRC.<sup>1</sup> On January 3, 2017, the Department received from Anvil International, LLC (“Petitioner”) a timely request to conduct an administrative review of the antidumping duty order on malleable cast iron pipe fittings from the PRC for four producers and/or exporters of the subject merchandise.<sup>2</sup> Based on this request, on February 13, 2017, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the “Act”), the Department published in the **Federal Register** a notice of initiation of an administrative review covering the period December 1, 2015, through November 30, 2016, with respect to four companies: Beijing Sai Lin Ke Hardware Co. Ltd., Jinan Meide Casting Co., Ltd., LDR Industries, Inc., and Langfang Pannext Pipe Fitting Co., Ltd.<sup>3</sup> On March 7, 2017, Petitioner timely withdrew its request for an antidumping duty administrative review of JMC and Pannext.<sup>4</sup>

#### Partial Rescission

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 a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioner timely withdrew its request for an administrative review of JMC and Pannext; no other party requested a review of these companies. Accordingly, we are rescinding this review, in part, with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

#### Assessment

The Department will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all

appropriate entries. For JMC and Pannext, the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

#### Notification to Importers

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

#### Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under an 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(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: April 10, 2017.

**James Maeder,**

*Senior Director, Office I for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2017-07494 Filed 4-12-17; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XF318

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the San Francisco Ferry Terminal Expansion Project, South Basin Improvements Project

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received a request from the San Francisco Bay Area Water Emergency Transportation Authority (WETA) for authorization to take marine mammals incidental to construction activities as part of a ferry terminal expansion and improvements project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting public comment on its proposal to issue an incidental harassment authorization (IHA) to WETA to incidentally take marine mammals, by Level B harassment only, during the specified activity.

**DATES:** Comments and information must be received no later than May 15, 2017.

**ADDRESSES:** Comments on this proposal should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910, and electronic comments should be sent to [ITP.mccue@noaa.gov](mailto:ITP.mccue@noaa.gov).

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at [www.nmfs.noaa.gov/pr/permits/incidental/construction.html](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.html) without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 86694 (December 1, 2016).

<sup>2</sup> See letter from Petitioner, “Malleable Cast Iron Pipe Fittings from The People’s Republic Of China: Request for Administrative Review,” dated January 3, 2017.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017).

<sup>4</sup> See Letter from Anvil to the Department, “Malleable Cast Iron Pipe Fittings from The People’s Republic Of China: Partial Withdrawal Of Request for Administrative Review,” dated March 7, 2017 (“Withdrawal Request”).

**FOR FURTHER INFORMATION CONTACT:**

Laura McCue, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained online at: [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm). In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:****Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as “. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

NMFS published an Environmental Assessment (EA) in 2016 on WETA’s ferry terminal construction activities. NMFS found that there would be no significant impacts to the human environment and signed a finding of no significant impact (FONSI) on June 28, 2016. Because the activities and analysis are the same as WETA’s 2016 activities, NMFS believes it appropriate to use the existing EA and FONSI for WETA’s 2017 activities.

**Summary of Request**

NMFS received a request from WETA for an IHA to take marine mammals incidental to pile driving and removal in association with the San Francisco Ferry Terminal Expansion Project, South Basin Improvements Project (Project) in San Francisco Bay, California. In-water work associated with the project is expected to be completed within 23 months. This proposed IHA is for the first phase of construction activities (June 1, 2017–May 31, 2018).

The use of both vibratory and impact pile driving and removal is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Seven species of marine mammals have the potential to be affected by the specified activities: harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Northern elephant seal (*Mirounga angustirostris*), Northern fur seal (*Callorhinus ursinus*), harbor porpoise (*Phocoena phocoena*), gray whale (*Eschrichtius robustus*), and bottlenose dolphin (*Tursiops truncatus*). These species may occur year round in the action area.

WETA received authorization for take of marine mammals incidental to these same activities in 2016 (81 FR 43993; July 6, 2016); however construction activities did not occur. Therefore, the specified activities described in the previous notice of proposed IHA are identical to the activities described here. In addition, similar construction and pile driving activities in San Francisco Bay have been authorized by NMFS in the past. These projects include construction activities at the Exploratorium (75 FR 66065, October 27, 2010), Pier 36 (77 FR 20361, April

4, 2012), and the San Francisco-Oakland Bay Bridge (71 FR 26750, May 8, 2006; 72 FR 25748, August 9, 2007; 74 FR 41684, August 18, 2009; 76 FR 7156, February 9, 2011; 78 FR 2371, January 11, 2013; 79 FR 2421, January 14, 2014; and 80 FR 43710, July 23, 2015).

**Description of the Specified Activity***Overview*

The WETA is expanding berthing capacity at the Downtown San Francisco Ferry Terminal (Ferry Terminal), located at the San Francisco Ferry Building (Ferry Building), to support existing and future planned water transit services operated on San Francisco Bay by WETA and WETA’s emergency operations.

The Downtown San Francisco Ferry Terminal Expansion Project would eventually include phased construction of three new water transit gates and overwater berthing facilities, in addition to supportive landside improvements, such as additional passenger waiting and queuing areas, circulation improvements, and other water transit-related amenities. The new gates and other improvements would be designed to accommodate future planned water transit services between Downtown San Francisco and Antioch, Berkeley, Martinez, Hercules, Redwood City, Richmond, and Treasure Island, as well as emergency operation needs. According to current planning and operating assumptions, WETA will not require all three new gates (Gates A, F, and G) to support existing and new services immediately. As a result, WETA is planning that project construction will be phased. The first phase will include construction of Gates F and G, as well as other related improvements in the South Basin.

*Dates and Duration*

The total project is expected to require a maximum of 130 days of in-water pile driving. The project may require up to 23 months for completion; with a maximum of 106 days for pile driving in the first year. In-water activities are limited to occurring between June 1 and November 30 of any year to minimize impacts to special-status and commercially important fish species, as established in WETA’s Long-Term Management Strategy. If in-water work will extend beyond the effective dates of the IHA, a second IHA application will be submitted by WETA. This proposed authorization would be effective from June 1, 2017 through May 31, 2018.

*Specific Geographic Region*

The San Francisco ferry terminal is located in the western shore of San Francisco Bay (see Figure 1 of WETA’s application). The ferry terminal is five blocks north of the San Francisco Oakland Bay Bridge. More specifically, the south basin of the ferry terminal is located between Pier 14 and the ferry plaza. San Francisco Bay and the adjacent Sacramento-San Joaquin Delta make up one of the largest estuarine systems on the continent. The Bay has undergone extensive industrialization, but remains an important environment for healthy marine mammal populations year round. The area surrounding the proposed activity is an intertidal landscape with heavy industrial use and boat traffic. Ambient sound levels are not available for the SF Ferry terminal; however, in this industrial area, ambient sound levels are expected to exceed 120 dB RMS as a result of the consistent recreational and commercial boat traffic.

*Detailed Description of Activities*

The project supports existing and future planned water transit services operated by WETA, and regional policies to encourage transit uses. Furthermore, the project addresses deficiencies in the transportation network that impede water transit operation, passenger access, and passenger circulation at the Ferry Terminal.

The project includes construction of two new water transit gates and associated overwater berthing facilities, in addition to supportive improvements, such as additional passenger waiting and queuing areas and circulation improvements in a 7.7-acre area (see Figure 1 in the WETA’s application, which depicts the project area, and Figure 2, which depicts the project improvements). The two-year project includes the following elements: (1) Removal of portions of existing deck and pile construction (portions will remain as open water, and other

portions will be replaced); (2) Construction of two new gates (Gates F and G); (3) Relocation of an existing gate (Gate E); and (4) Improved passenger boarding areas, amenities, and circulation, including extending the East Bayside Promenade along Gates E, F, and G; strengthening the South Apron of the Agriculture Building; creating the Embarcadero Plaza; and installing weather protection canopies for passenger queuing. This notice of proposed IHA will describe activities for the two-year project, but will only analyze activities that are expected to occur in 2017.

Implementation of the project improvements will result in a change in the type and area of structures over San Francisco Bay. In some areas, structures will be demolished and then rebuilt. In 2017, the project activities will include both the removal and installation of piles as summarized in Table 1. Demolition and construction could be completed within 23 months.

TABLE 1—SUMMARY OF PILE REMOVAL AND INSTALLATION FOR 2017 ACTIVITIES

Project element	Pile diameter (inches)	Pile type	Method	Number of piles/schedule
<b>2017 Activities</b>				
Demolition in the South Basin	12 to 18	Wood and concrete .....	Pull or cut off 2 feet below mud line.	350 piles/30 days.
Removal of Dolphin Piles in the South Basin.	36	Steel: 140 to 150 feet in length.	Pull out .....	Four dolphin piles/1 day.
Embarcadero Plaza and East Bayside Promenade.	24 or 36	Steel: 135 to 155 feet in length.	Impact or Vibratory Driver .....	220 24- or 36-inch piles*/65 days.
Fender Piles .....	14	Polyurethane-coated pressure-treated wood; 64 feet in length.	Impact or Vibratory Driver .....	38 piles/10 days.
<b>2018 Activities<sup>1</sup></b>				
Gates E, F, and G Dolphin Piles.	36	Steel: 145 to 155 feet in length.	Impact or Vibratory Driver .....	14 total: two at each of the floats for protection; two between each of the floats; and four adjacent to the breakwater.
Gate F and G Guide Piles .....	36	Steel: 140 to 150 feet in length.	Impact or Vibratory Driver .....	12 (6 per gate)/12 days.
Gate E Guide Piles .....	36	Steel: 145 to 155 feet in length.	Vibratory driver for removal, may be reinstalled with an impact hammer.	Six piles will be removed and reinstalled/12 days.
Fender Piles .....	14	Polyurethane-coated pressure-treated wood; 64 feet in length.	Impact or Vibratory Driver .....	38/10 days.

\* Either 24-in or 36-in piles may be used for the Embarcadero Plaza and East Bayside Promenade, not both. For our analysis, we assume the 36-in piles will be used.

<sup>1</sup> The activities in 2018 are listed here for reference but are not analyzed in this notice of proposed IHA.

*Removal of Existing Facilities*

As part of the project, the remnants of Pier 2 will be demolished and removed. This consists of approximately 21,000 square feet of existing deck structure supported by approximately 350 wood and concrete piles. In addition, four

dolphin piles will be removed. Demolition will be conducted from barges. Two barges will be required: One for materials storage, and one outfitted with demolition equipment (crane, clamshell bucket for pulling of piles, and excavator for removal of the

deck). Diesel-powered tug boats will bring the barges to the project area, where they will be anchored. Piles will be removed by either cutting them off two feet below the mud line or pulling the pile through vibratory extraction.

*Construction of Gates and Berthing Structures*

The new gates (Gates F and G) will be built similarly in 2018. Each gate will be designed with an entrance portal—a prominent doorway physically separating the berthing structures from the surrounding area. Berthing structures will be provided for each new gate, consisting of floats, gangways, and guide piles. The steel floats will be approximately 42 feet wide by 135 feet long. The steel truss gangways will be approximately 14 feet wide and 105 feet long. The gangway will be designed to rise and fall with tidal variations while meeting Americans with Disabilities Act (ADA) requirements. The gangway and the float will be designed with canopies, consistent with the current design of existing Gates B and E. The berthing structures will be fabricated off site and floated to the project area by barge. Six steel guide piles will be required to secure each float in place. In addition, dolphin piles may be used at each berthing structure to protect against the collision of vessels with other structures or vessels. A total of up to 14 dolphin piles may be installed.

Chock-block fendering will be added along the East Bayside Promenade, to adjacent structures to protect against collision. The chock-block fendering will consist of square, 12-inch-wide, polyurethane-coated, pressure-treated wood blocks that are connected along the side of the adjacent pier structure, and supported by polyurethane-coated, pressure-treated wood piles.

In addition, the existing Gate E float will be moved 43 feet to the east, to align with the new gates and East Bayside Promenade. The existing six 36-inch-diameter steel guide piles will be removed using vibratory extraction, and reinstalled to secure the Gate E float in place. Because of Gate E’s new location, to meet ADA requirements, the existing 90-foot-long steel truss gangway will be replaced with a longer, 105-foot-long gangway.

*Passenger Boarding and Circulation Areas*

Several improvements will be made to passenger boarding and circulation areas. New deck and pile-supported structures will be built.

- An Embarcadero Plaza, elevated approximately three to four feet above current grade, will be created. The Embarcadero Plaza will require new deck and pile construction to fill an open-water area and replace existing structures that do not comply with Essential Facilities requirements.
  - The East Bayside Promenade will be extended to create continuous pedestrian access to Gates E, F, and G, as well as to meet public access and pedestrian circulation requirements along San Francisco Bay. It will extend approximately 430 feet in length, and will provide an approximately 25-foot-wide area for pedestrian circulation and public access along Gates E, F, and G. The perimeter of the East Bayside Promenade will also include a curbed edge with a guardrail.
  - Short access piers, approximately 30 feet wide and 45 feet long, will extend from the East Bayside Promenade to the portal for each gate.
  - The South Apron of the Agriculture Building will be upgraded to temporarily support access for passenger circulation. Depending on their condition, as determined during Final Design, the piles supporting this apron may need to be strengthened with steel jackets.
  - Two canopies will be constructed along the East Bayside Promenade: one between Gates E and F, and one between Gates F and G. Each of the canopies will be 125 feet long and 20 feet wide. Each canopy will be supported by four columns at 35 feet on center, with 10-foot cantilevers at either end. The canopies will be constructed of steel and glass, and will include photovoltaic cells.
- The new deck will be constructed on the piles, using a system of beam-and-flat-slab-concrete construction, similar to what has been built in the Ferry Building area. The beam-and-slab

construction will be either precast or cast-in-place concrete (or a combination of the two), and approximately 2.5 feet thick. Above the structure, granite paving or a concrete topping slab will provide a finished pedestrian surface.

The passenger facilities, amenities, and public space improvements—such as the entrance portals, canopy structures, lighting, guardrails, and furnishings—will be surface-mounted on the pier structures after the new construction and repair are complete. The canopies and entrance portals will be constructed offsite, delivered to the site, craned into place by barge, and assembled onsite. The glazing materials, cladding materials, granite pavers, guardrails, and furnishings will be assembled onsite.

Both vibratory and impact pile-driving are listed as potential methods for pile installation. WETA proposes to use impact pile-driving as a contingency. WETA’s preferred method of pile installation is vibratory pile-driving; however, if the substrate gives refusal, the impact driver will be used to complete pile installation. There is a small chance that an entire pile may be driven entirely with the impact hammer, but this is unlikely. In this analysis we conservatively estimate take for both vibratory and impact pile-driving and we assume entire piles will be driven with an impact hammer to assess the worst case scenario.

*Dredging Requirements*

The side-loading vessels require a depth of 12.5 feet below mean lower low water (MLLW) on the approach and in the berthing area. Based on a bathymetric survey conducted in 2015, it is estimated that the new Gates F and G will require dredging to meet the required depths. The expected dredging volumes are presented in Table 2. These estimates are based on dredging the approach areas to 123.5 feet below MLLW, and 2 feet of overdredge depth, to account for inaccuracies in dredging practices. The dredging will take approximately 2 months.

TABLE 2—SUMMARY OF DREDGING REQUIREMENTS

Dredging element	Summary
Initial dredging:	
Gate F .....	0.78 acre/6,006 cubic yards.
Gate G .....	1.64 acres/14,473 cubic yards.
Total for Gates F and G .....	2.42 acres/20,479 cubic yards.
Staging .....	On barges.
Typical Equipment .....	Clamshell dredge on barge; disposal barge; survey boat.
Duration .....	2 months.
Maintenance dredging:	
Gates F and G .....	5,000 to 10,000 cubic yards.

TABLE 2—SUMMARY OF DREDGING REQUIREMENTS—Continued

Dredging element	Summary
Frequency .....	Every 3 or 4 years.

Based on observed patterns of sediment accumulation in the Ferry Terminal area, significant sediment accumulation will not be expected, because regular maintenance dredging is not currently required to maintain operations at existing Gates B and E. However, some dredging will likely be required on a regular maintenance cycle beneath the floats at Gates F and G, due to their proximity to the Pier 14 breakwater. It is expected that maintenance dredging will be required every 3 to 4 years, and will require removal of approximately 5,000 to 10,000 cubic yards of material.

Dredging and disposal of dredged materials will be conducted in cooperation with the San Francisco Dredged Materials Management Office (DMMO), including development of a sampling plan, sediment characterization, a sediment removal plan, and disposal in accordance with the Long-Term Management Strategy for San Francisco Bay to ensure beneficial reuse, as appropriate. Based on the results of the sediment analysis, dredged materials will be disposed at the San Francisco Deep Ocean Disposal Site, disposal at an upland facility, or beneficial reuse. Selection of the disposal site was reviewed and approved by the DMMO.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

#### Description of Marine Mammals in the Area of the Specified Activity

We have reviewed WETA's species information—which summarizes available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 4 and 5 of the applications, as well as to NMFS's Stock Assessment Reports (SAR; [www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/)), instead of

reprinting all of the information here. Additional general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS's Web site ([www.nmfs.noaa.gov/pr/species/mammals/](http://www.nmfs.noaa.gov/pr/species/mammals/)). Table 3 lists all species with expected potential for occurrence in San Francisco Bay and summarizes information related to the population or stock, including potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality to assess the population-level effects of the anticipated mortality from a specific project (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality are included here as gross indicators of the status of the species and other threats. Species that could potentially occur in the proposed survey areas but are not expected to have reasonable potential to be harassed by in-water construction are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that

comprises that stock. For some species, this geographic area may extend beyond U.S. waters. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters.

There are seven marine mammal species that may inhabit or may likely transit through the waters nearby the Ferry Terminal, and are expected to potentially be taken by the specified activity. These include the Pacific harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), harbor porpoise (*Phocoena phocoena*), gray whale (*Eschrichtius robustus*), and bottlenose dolphin (*Tursiops truncatus*). Multiple additional marine mammal species may occasionally enter the activity area in San Francisco Bay but would not be expected to occur in shallow nearshore waters of the action area. Guadalupe fur seals (*Arctocephalus philippii townsendi*) generally do not occur in San Francisco Bay; however, there have been recent sightings of this species due to the El Niño event. Only single individuals of this species have occasionally been sighted inside San Francisco Bay, and their presence near the action area is considered unlikely. No takes are requested for this species, and a shutdown zone will be in effect for this species if observed approaching the Level B harassment zone. Although it is possible that a humpback whale (*Megaptera novaeangliae*) may enter San Francisco Bay and find its way into the project area during construction activities, their occurrence is unlikely. No takes are requested for this species, and a delay and shutdown procedure will be in effect for this species if observed approaching the Level B harassment zone.

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF SAN FRANCISCO FERRY TERMINAL

Species	Stock	ESA/MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR <sup>3</sup>	Relative occurrence in San Francisco Bay; season of occurrence
<b>Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</b>					
<b>Family Phocoenidae (porpoises)</b>					
Harbor porpoise ( <i>Phocoena phocoena</i> ).	San Francisco-Russian River.	—; N .....	9,886 (0.51; 6,625; 2011).	66	Common.
<b>Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</b>					
<b>Family Delphinidae (dolphins)</b>					
Bottlenose dolphin <sup>4</sup> ( <i>Tursiops truncatus</i> ).	California coastal .....	—; N .....	453 (0.06; 346; 2011) ....	2.4	Rare.
<b>Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</b>					
<b>Family Eschrichtiidae</b>					
Gray whale ( <i>Eschrichtius robustus</i> ).	Eastern N. Pacific .....	—; N .....	20,990 (0.05; 20,125; 2011).	624	Rare.
<b>Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)</b>					
<b>Family Balaenopteridae</b>					
Humpback whale ( <i>Megaptera novaeangliae</i> ).	California/Oregon/Washington stock.	T <sup>5</sup> ; S .....	1,918 (0.05; 1,876; 2014).	11	Unlikely.
<b>Order Carnivora—Superfamily Pinnipedia</b>					
<b>Family Otariidae (eared seals and sea lions)</b>					
California sea lion ( <i>Zalophus californianus</i> ).	U.S. ....	—; N .....	296,750 (n/a; 153,337; 2011).	9,200	Common.
Guadalupe fur seal <sup>5</sup> ( <i>Arctocephalus philippii townsendi</i> ).	Mexico to California .....	T; S .....	20,000 (n/a; 15,830; 2010).	91	Unlikely.
Northern fur seal ( <i>Callorhinus ursinus</i> ).	California stock .....	—; N .....	14,050 (n/a; 7,524; 2013).	451	Unlikely.
<b>Family Phocidae (earless seals)</b>					
Harbor seal ( <i>Phoca vitulina</i> ) ...	California .....	—; N .....	30,968 (n/a; 27,348; 2012).	1,641	Common; Year-round resident.
Northern elephant seal ( <i>Mirounga angustirostris</i> ).	California breeding stock	—; N .....	179,000 (n/a; 81,368; 2010).	4,882	Rare.

<sup>1</sup> ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (—) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

<sup>2</sup> CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.

<sup>3</sup> Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

<sup>4</sup> Abundance estimates for these stocks are greater than eight years old and are, therefore, not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

<sup>5</sup> The humpback whales considered under the MMPA to be part of this stock could be from any of three different DPSs. In CA, it would be expected to primarily be whales from the Mexico DPS but could also be whales from the Central America DPS.

Below, for those species that are likely to be taken by the activities described, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and

describe any information regarding local occurrence.

*Harbor Seal*

The Pacific harbor seal is one of five subspecies of *Phoca vitulina*, or the common harbor seal. There are five species of harbor seal in the Pacific EEZ:

- (1) California stock; (2) Oregon/Washington coast stock; (3) Washington Northern inland waters stock; (4) Southern Puget Sound stock; and (5) Hood Canal stock. Only the California stock occurs in the action area and is analyzed in this document. The current

abundance estimate for this stock is 30,968. This stock is not considered strategic or designated as depleted under the MMPA and is not listed under the ESA. PBR is 1,641 animals per year. The average annual rate of incidental commercial fishery mortality (30 animals) is less than 10 percent of the calculated PBR (1,641 animals); therefore, fishery mortality is considered insignificant (Carretta *et al.*, 2016).

Although generally solitary in the water, harbor seals congregate at haulouts to rest, socialize, breed, and molt. Habitats used as haul-out sites include tidal rocks, bayflats, sandbars, and sandy beaches (Zeiner *et al.*, 1990). Haul-out sites are relatively consistent from year-to-year (Kopec and Harvey 1995), and females have been recorded returning to their own natal haul-out when breeding (Cunningham *et al.*, 2009). Long-term monitoring studies have been conducted at the largest harbor seal colonies in Point Reyes National Seashore and Golden Gate National Recreation Area since 1976. Castro Rocks and other haulouts in San Francisco Bay are part of the regional survey area for this study and have been included in annual survey efforts. Between 2007 and 2012, the average number of adults observed ranged from 126 to 166 during the breeding season (March through May), and from 92 to 129 during the molting season (June through July) (Truchinski *et al.*, 2008; Flynn *et al.*, 2009; Codde *et al.*, 2010; Codde *et al.*, 2011; Codde *et al.*, 2012; Codde and Allen 2015). Marine mammal monitoring at multiple locations inside San Francisco Bay was conducted by Caltrans from May 1998 to February 2002, and determined that at least 500 harbor seals populate San Francisco Bay (Green *et al.*, 2002). This estimate is consistent with previous seal counts in the San Francisco Bay, which ranged from 524 to 641 seals from 1987 to 1999 (Goals Project 2000). Although harbor seals haul-out at approximately 20 locations in San Francisco Bay, there are three locations that serve as primary locations: Mowry Slough in the south Bay, Corte Madera Marsh and Castro Rocks in the north Bay, and Yerba Buena Island in the central Bay (Grigg 2008; Gibble 2011). The main pupping areas in the San Francisco Bay are at Mowry Slough and Castro Rocks (Caltrans 2012). Pupping season for harbor seals in San Francisco Bay spans from approximately March 15 through May 31, with pup numbers generally peaking in late April or May (Carretta *et al.*, 2016). Births of harbor seals have not been observed at Corte Madera

Marsh and Yerba Buena Island, but a few pups have been seen at these sites. Harbor seals forage in shallow waters on a variety of fish and crustaceans that are present throughout much of San Francisco Bay, and therefore, could occasionally be found foraging in the action area as well.

#### *California Sea Lion*

California sea lions range all along the western border of North America. The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California (Allen and Angliss 2015). Although California sea lions forage and conduct many activities in the water, they also use haul-outs. California sea lions breed in Southern California and along the Channel Islands during the spring. The current population estimate for California sea lions is 296,750 animals. This species is not considered strategic under the MMPA, and is not designated as depleted. This species is also not listed under the ESA. PBR is 9,200 (Carretta *et al.*, 2016). Interactions with fisheries, boat collisions, human interactions, and entanglement are the main threats to this species (Carretta *et al.*, 2016).

El Niño affects California sea lion populations, with increased observations and strandings of this species in the area. Current observations of this species in CA have increased significantly over the past few years. Additionally, as a result of the large numbers of sea lion strandings in 2013, NOAA declared an unusual mortality event (UME). Although the exact causes of this UME are unknown, two hypotheses meriting further study include nutritional stress of pups resulting from a lack of forage fish available to lactating mothers and unknown disease agents during that time period.

In San Francisco Bay, sea lions haul out primarily on floating K docks at Pier 39 in the Fisherman's Wharf area of the San Francisco Marina. The Pier 39 haul out is approximately 1.5 miles from the project vicinity. The Marine Mammal Center (TMMC) in Sausalito, California has performed monitoring surveys at this location since 1991. A maximum of 1,706 sea lions was seen hauled out during one survey effort in 2009 (TMMC 2015). Winter numbers are generally over 500 animals (Goals Project 2000). In August to September, counts average from 350 to 850 (NMFS 2004). Of the California sea lions observed, approximately 85 percent were male. No pupping activity has been observed at this site or at other locations in the San Francisco Bay (Caltrans 2012). The

California sea lions usually frequent Pier 39 in August after returning from the Channel Islands (Caltrans 2013). In addition to the Pier 39 haul-out, California sea lions haul out on buoys and similar structures throughout San Francisco Bay. They mainly are seen swimming off the San Francisco and Marin shorelines within San Francisco Bay, but may occasionally enter the project area to forage.

Although there is little information regarding the foraging behavior of the California sea lion in the San Francisco Bay, they have been observed foraging on a regular basis in the shipping channel south of Yerba Buena Island. Foraging grounds have also been identified for pinnipeds, including sea lions, between Yerba Buena Island and Treasure Island, as well as off the Tiburon Peninsula (Caltrans 2001).

#### *Northern Elephant Seal*

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.*, 1994), from December to March (Stewart and Huber 1993). Although movement and genetic exchange continues between rookeries, most elephant seals return to natal rookeries when they start breeding (Huber *et al.*, 1991). The California breeding population is now demographically isolated from the Baja California population, and is the only stock to occur near the action area. The current abundance estimate for this stock is 179,000 animals, with PBR at 4,882 animals (Carretta *et al.*, 2016). The population is reported to have grown at 3.8 percent annually since 1988 (Lowry *et al.*, 2014). Fishery interactions and marine debris entanglement are the biggest threats to this species (Carretta *et al.*, 2016). Northern elephant seals are not listed under the Endangered Species Act, nor are they designated as depleted, or considered strategic under the MMPA.

Northern elephant seals are common on California coastal mainland and island sites where they pup, breed, rest, and molt. The largest rookeries are on San Nicolas and San Miguel islands in the Northern Channel Islands. In the vicinity of San Francisco Bay, elephant seals breed, molt, and haul out at Año Nuevo Island, the Farallon Islands, and Point Reyes National Seashore (Lowry *et al.*, 2014). Adults reside in offshore pelagic waters when not breeding or molting. Northern elephant seals haul out to give birth and breed from December through March, and pups remain onshore or in adjacent shallow water through May, when they may occasionally make brief stops in San

Francisco Bay (Caltrans 2015b). The most recent sighting was in 2012 on the beach at Clipper Cove on Treasure Island, when a healthy yearling elephant seal hauled out for approximately one day. Approximately 100 juvenile northern elephant seals strand in San Francisco Bay each year, including individual strandings at Yerba Buena Island and Treasure Island (fewer than 10 strandings per year) (Caltrans 2015b). When pups of the year return in the late summer and fall to haul out at rookery sites, they may also occasionally make brief stops in San Francisco Bay.

#### *Northern Fur Seal*

Northern fur seals (*Callorhinus ursinus*) occur from southern California north to the Bering Sea and west to the Okhotsk Sea and Honshu Island, Japan. During the breeding season, approximately 74 percent of the worldwide population is found on the Pribilof Islands in the southern Bering Sea, with the remaining animals spread throughout the North Pacific Ocean (Lander and Kajimura 1982). Of the seals in U.S. waters outside of the Pribilofs, approximately one percent of the population is found on Bogoslof Island in the southern Bering Sea, San Miguel Island off southern California (NMFS 2007), and the Farallon Islands off central California. Two separate stocks of northern fur seals are recognized within U.S. waters: An Eastern Pacific stock and a California stock (including San Miguel Island and the Farallon Islands). Only the California breeding stock is considered here since it is the only stock to occur near the action area. The current abundance estimate for this stock is 14,050 and PBR is set at 451 animals (Carretta *et al.*, 2015). This stock has grown exponentially during the past several years. Interaction with fisheries remains the top threat to this species (Carretta *et al.*, 2015). This stock is not considered depleted or classified as strategic under the MMPA, and is not listed under the ESA.

#### *Harbor Porpoise*

In the Pacific, harbor porpoise are found in coastal and inland waters from Point Conception, California to Alaska and across to Kamchatka and Japan (Gaskin 1984). Harbor porpoise appear to have more restricted movements along the western coast of the continental U.S. than along the eastern coast. Regional differences in pollutant residues in harbor porpoise indicate that they do not move extensively between California, Oregon, and Washington (Calambokidis and Barlow 1991). That

study also showed some regional differences within California (Allen and Angliss 2014). Of the 10 stocks of Pacific harbor porpoise, only the San Francisco-Russian River stock is considered here since it is the only stock to occur near the action area. This current abundance estimate for this stock is 9,886 animals, with a PBR of 66 animals (Carretta *et al.*, 2015). Current population trends are not available for this stock. The main threats to this stock include fishery interactions. This stock is not designated as strategic or considered depleted under the MMPA, and is not listed under the ESA.

#### *Gray Whale*

Once common throughout the Northern Hemisphere, the gray whale was extinct in the Atlantic by the early 1700s. Gray whales are now only commonly found in the North Pacific. Genetic comparisons indicate there are distinct "Eastern North Pacific" (ENP) and "Western North Pacific" (WNP) population stocks, with differentiation in both mitochondrial DNA (mtDNA) haplotype and microsatellite allele frequencies (LeDuc *et al.*, 2002; Lang *et al.*, 2011a; Weller *et al.*, 2013). Only the ENP stock occurs in the action area and is considered in this document. The current population estimate for this stock is 20,990 animals, with PBR at 624 animals (Carretta *et al.*, 2015). The population size of the ENP gray whale stock has increased over several decades despite an UME in 1999 and 2000 and has been relatively stable since the mid-1990s. Interactions with fisheries, ship strikes, entanglement in marine debris, and habitat degradation are the main concerns for the gray whale population (Carretta *et al.*, 2015). This stock is not listed under the ESA, and is not considered a strategic stock or designated as depleted under the MMPA.

#### *Bottlenose Dolphin*

Bottlenose dolphins are distributed worldwide in tropical and warm-temperate waters. In many regions, including California, separate coastal and offshore populations are known (Walker 1981; Ross and Cockcroft 1990; Van Waerebeek *et al.*, 1990). The California coastal stock is distinct from the offshore stock based on significant differences in cranial morphology and genetics, where the two stocks only share one of 56 haplotypes (Carretta *et al.*, 2016). California coastal bottlenose dolphins are found within about one kilometer of shore (Hansen 1990; Carretta *et al.*, 1998; Defran and Weller 1999) from central California south into Mexican waters, at least as far south as

San Quintin, Mexico, and the area between Ensenada and San Quintin, Mexico may represent a southern boundary for the California coastal population (Carretta *et al.*, 2016). Oceanographic events appear to influence the distribution of animals along the coasts of California and Baja California, Mexico, as indicated by El Niño events. There are seven stocks of bottlenose dolphins in the Pacific; however, only the California coastal stock may occur in the action area, and is analyzed in this proposed IHA. The current stock abundance estimate for the California coastal stock is 453 animals, with PBR at 3.3 animals (Carretta *et al.*, 2016). Pollutant levels in California are a threat to this species, and this stock may be vulnerable to disease outbreaks, particularly morbillivirus (Carretta *et al.*, 2008). This stock is not listed under the ESA, and is not considered strategic or designated as depleted under the MMPA.

#### **Potential Effects of the Specified Activity on Marine Mammals and Their Habitat**

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.*, sound produced by pile driving and removal) may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis* section will consider the content of this section, the *Estimated Take by Incidental Harassment* section and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

#### *Description of Sound Sources*

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with

sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal ( $\mu\text{Pa}$ ). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1  $\mu\text{Pa}$ ). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1  $\mu\text{Pa}$  and all airborne sound levels in this document are referenced to a pressure of 20  $\mu\text{Pa}$ .

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and

invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.*, 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.

- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.

- Biological: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.

- Anthropogenic: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.*, 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.*, a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary

widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

The underwater acoustic environment at the ferry terminal is likely to be dominated by noise from day-to-day port and vessel activities. This is a highly industrialized area with high-use from small- to medium-sized vessels, and larger vessel that use the nearby major shipping channel. Underwater sound levels for water transit vessels, which operate throughout the day from the San Francisco Ferry Building ranged from 152 dB to 177 dB (WETA, 2003a). While there are no current measurements of ambient noise levels at the ferry terminal, it is likely that levels within the basin periodically exceed the 120 dB threshold and, therefore, that the high levels of anthropogenic activity in the basin create an environment far different from quieter habitats where behavioral reactions to sounds around the 120 dB threshold have been observed (*e.g.*, Malme *et al.*, 1984, 1988).

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see Southall *et al.*, (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (e.g., rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious

combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine

mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007). The functional groups and the associated frequencies are indicated below in Table 4 (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species).

TABLE 4—MARINE MAMMAL HEARING GROUPS AND THEIR GENERALIZED HEARING RANGE

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> and <i>L. australis</i> ).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

\* Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

As mentioned previously in this document, seven marine mammal species (three cetaceans and four pinnipeds) may occur in the project area. Of these three cetaceans, one is classified as a low-frequency cetacean (i.e. gray whale), one is classified as a mid-frequency cetacean (i.e., bottlenose dolphin), and one is classified as a high-frequency cetaceans (i.e., harbor porpoise) (Southall *et al.*, 2007). Additionally, harbor seals, Northern fur seals, and Northern elephant seals are classified as members of the phocid pinnipeds in water functional hearing group while California sea lions are grouped under the Otariid pinnipeds in water functional hearing group. A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

*Acoustic Impacts*

Please refer to the information given previously (*Description of Sound Sources*) regarding sound, characteristics of sound types, and metrics used in this document.

Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following; temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Gotz *et al.*, 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic

effects before providing discussion specific to WETA's construction activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (i.e., when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the

masking zone may be highly variable in size.

We describe the more severe effects (*i.e.*, permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that WETA's activities may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002, 2005b). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.*, tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.*, 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.*, 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dB above a 40-dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.*, Southall *et al.*, 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is

considerably less likely that PTS could occur.

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.*, change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007). WETA's activities do not involve the use of devices such as explosives or mid-frequency active sonar that are associated with these types of effects.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a "stranding" (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxins, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.*, Geraci *et al.*, 1999). However, the cause or causes of most strandings are unknown (*e.g.*, Best 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.*, Sih *et al.*, 2004). For further description of stranding events see, *e.g.*, Southall *et al.*, 2006; Jepson *et al.*, 2013; Wright *et al.*, 2013).

1. *Temporary threshold shift*—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal

may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale [*Delphinapterus leucas*], harbor porpoise, and Yangtze finless porpoise [*Neophocaena asiaeorientalis*]) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (*e.g.*, Finneran *et al.*, 2002; Nachtigall *et al.*, 2004; Kastak *et al.*, 2005; Lucke *et al.*, 2009; Popov *et al.*, 2011). In general, harbor seals (Kastak *et al.*, 2005; Kastelein *et al.*, 2012a) and harbor porpoises (Lucke *et al.*, 2009; Kastelein *et al.*, 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007) and Finneran and Jenkins (2012).

2. *Behavioral effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it

is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a “progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,” rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior,

alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.*, Kastelein *et al.*, 2001, 2005b, 2006; Gailey *et al.*, 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation

click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.*, Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.*, Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.*, directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and

whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.*, Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.*, decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.*, Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

**3. Stress responses**—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood

pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.*, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (*e.g.*, Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also

experience stress responses (NRC, 2003).

**4. Auditory masking**—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.*, snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.*, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TTS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.*, Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.*, Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*,

2007b; Di Iorio and Clark, 2009; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (e.g., Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (e.g., Branstetter *et al.*, 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (e.g., from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

#### *Acoustic Effects, Underwater*

*Potential Effects of Pile Driving and Removal Sound*—The effects of sounds from pile driving and removal might include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The effects of pile driving and removal on marine mammals are dependent on several factors, including the type and depth of the animal; the pile size and type, and the intensity and duration of the pile driving/removal sound; the substrate; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving and removal activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the frequency, received level, and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the

environment. In addition, substrates that are soft (e.g., sand) would absorb or attenuate the sound more readily than hard substrates (e.g., rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species could be expected to include physiological and behavioral responses to the acoustic signature (Viada *et al.*, 2008). Potential effects from impulsive sound sources like pile driving can range in severity from effects such as behavioral disturbance to temporary or permanent hearing impairment (Yelverton *et al.*, 1973).

*Hearing Impairment and Other Physical Effects*—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shifts. PTS constitutes injury, but TTS does not (Southall *et al.*, 2007). Based on the best scientific information available, the SPLs for the construction activities in this project are below the thresholds that could cause TTS or the onset of PTS (Table 6).

*Non-auditory Physiological Effects*—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving or removal to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

#### *Disturbance Reactions*

Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses

to pulsed sounds. With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.*, 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). If a marine mammal responds to a stimulus by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals, and if so potentially on the stock or species, could potentially be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Longer-term habitat abandonment due to loss of desirable acoustic environment; and
- Longer-term cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.*, 2007).

### *Auditory Masking*

Natural and artificial sounds can disrupt behavior by masking. The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving and removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is low. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

*Acoustic Effects, Airborne—Pinnipeds* that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise will primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria in Table 5. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with heads above water. Most likely, airborne

sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple instances of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

### *Anticipated Effects on Habitat*

The proposed activities at the Ferry Terminal would not result in permanent negative impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The primary potential acoustic impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory and impact pile driving and removal in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

### *Pile Driving Effects on Potential Prey (Fish)*

Construction activities would produce continuous (*i.e.*, vibratory pile driving sounds and pulsed (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005)

identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.*, 1992; Skalski *et al.*, 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

### *Pile Driving Effects on Potential Foraging Habitat*

The area likely impacted by the project is relatively small compared to the available habitat in San Francisco Bay. Avoidance by potential prey (*i.e.*, fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the San Francisco ferry terminal and nearby vicinity.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

### **Estimated Take by Incidental Harassment**

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of

takes is “small” and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as: “. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).”

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to vibratory and impact pile driving and removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.*, bubble curtain, soft start, etc.—discussed in detail below in *Proposed Mitigation* section), Level A harassment is neither anticipated nor proposed to be authorized. The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level

of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.*, because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The area where the ferry terminal is located is not considered important habitat for marine mammals, as it is a highly industrial area with high levels of vessel traffic and background noise. While there are harbor seal haul outs within 2 miles of the construction activity at Yerba Buena Island, and a California sea lion haul out approximately 1.5 miles away at Pier 39, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals that may venture near the ferry terminal, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. WETA has requested

authorization for the incidental taking of small numbers of harbor seals, northern elephant seals, northern fur seals, California sea lions, harbor porpoise, bottlenose dolphin, and gray whales near the San Francisco Ferry Terminal that may result from construction activities associated with the project described previously in this document.

In order to estimate the potential instances of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential instances of take.

*Sound Thresholds*

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by Level B harassment might occur. These thresholds (Table 5) are used to estimate when harassment may occur (*i.e.*, when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions.

TABLE 5—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level B harassment (underwater) ...	Behavioral disruption .....	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne) .....	Behavioral disruption .....	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance) (NMFS 2016, 81 FR 51694). This new guidance established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. WETA used this new guidance

to determine sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by injury, in the form of PTS, might occur. These acoustic thresholds are presented using dual metrics of cumulative sound exposure level (SEL<sub>cum</sub>) and peak sound level (PK) (Table 6). The lower and/or

upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007), and the revised generalized hearing ranges are presented in the new Guidance. The functional hearing groups and the associated frequencies are indicated in Table 6 below.

TABLE 6—SUMMARY OF PTS ONSET ACOUSTIC THRESHOLDS <sup>1</sup>

Hearing Group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-frequency cetaceans .....	<i>Cell 1</i> ..... Lpk,flat: 219 dB ..... LE,LF,24h: 183 dB .....	<i>Cell 2.</i> ..... LE,LF,24h: 199 dB.
Mid-frequency cetaceans .....	<i>Cell 3</i> ..... Lpk,flat: 230 dB ..... LE,MF,24h: 185 dB .....	<i>Cell 4.</i> ..... LE,MF,24h: 198 dB.
High-frequency cetaceans .....	<i>Cell 5.</i> ..... Lpk,flat: 202 dB ..... LE,HF,24h: 155 dB .....	<i>Cell 6.</i> ..... LE,HF,24h: 173 dB.
Phocid Pinnipeds (underwaters) .....	<i>Cell 7</i> ..... Lpk,flat: 218 dB ..... LE,PW,24h: 185 dB .....	<i>Cell 8.</i> ..... LE,PW,24h: 201 dB.
Otariid Pinnipeds (underwater) .....	<i>Cell 9</i> ..... Lpk,flat: 232 dB ..... LE,OW,24h: 203 dB .....	<i>Cell 10.</i> ..... LE,OW,24h: 219 dB.

<sup>1</sup> NMFS 2016.

*Distance to Sound Thresholds*

*Underwater Sound Propagation Formula*—Pile driving and removal generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

where

- R<sub>1</sub> = the distance of the modeled SPL from the driven pile, and
- R<sub>2</sub> = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20\*log[range]). Cylindrical spreading occurs in an environment in which

sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10\*log[range]). A practical spreading value of 15 is often used under conditions, such as at the San Francisco Ferry Terminal, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

*Underwater Sound*—The intensity of pile driving and removal sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. These data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles.

In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from vibratory or impact pile driving or removal at the ferry terminal, we considered existing measurements from similar physical environments (e.g., estuarine areas of soft substrate where water depths are less than 16 feet).

*Level A Thresholds (Table 7)*

The values used to calculate distances at which sound would be expected to

exceed the Level A thresholds for impact driving of 24-in and 36-in piles include peak values of 210 dB for 36-in piles and 207 dB for 24-in piles (Caltrans 2015a). Anticipated SELs for unattenuated impact pile-driving would be 183 dB for 36-inch pile driving and 178 dB for 24-inch piles (Caltrans 2015a). Bubble curtains will be used during the installation of these piles, which is expected to reduce noise levels by about 10 dB rms (Caltrans 2015a), which are the values used in Table 7. Vibratory driving source levels include 165 dB RMS for 24-in piles and 175 dB RMS for 36-in piles (Caltrans 2015a). In the user spreadsheet from NMFS' Guidance, 1800 strikes per pile with 2 piles per day was used for impact driving of 36-in piles, and 1800 strikes per pile with 3 piles per day was used for impact driving of 24-in piles. Total duration for vibratory driving of 24-in or 36-in piles is one hour. Both pile sizes are analyzed, but only 36-in piles are used to conservatively calculate take.

The values used to calculate distances at which sound would be expected to exceed the Level A thresholds for impact driving of 14-in wood piles include a peak value of 180 dB and SEL value of 148 dB (Caltrans 2015a). Vibratory driving source level is assumed to be 144 dB RMS (Caltrans 2015a). In the user spreadsheet from NMFS' Guidance, 200 strikes per pile and 6 piles per day were used. Total duration for vibratory driving of 14-in wood piles is one hour.

TABLE 7—EXPECTED PILE-DRIVING NOISE LEVELS AND DISTANCES OF LEVEL A THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER

Project element requiring pile installation	Source levels at 10 meters (dB) <sup>1</sup>			Distance to Level A threshold in meters				
	Peak <sup>1</sup>	SEL	RMS	Phocids	Otariids	LF* cetaceans	MF* cetaceans	HF* cetaceans
18-Inch Wood Piles—Vibratory Extraction .....			1 150	0	0	0	0	0
18-Inch Concrete Piles—Vibratory Extraction .....			1 150	0	0	0	0	0
24-Inch Steel Piles—Vibratory Driver <sup>3</sup> .....			165	8	0.5	13	1	19
24-Inch Steel Piles—Impact Driver (BCA) <sup>2,3</sup> .....	<sup>2</sup> 207	<sup>2</sup> 178		164	12	307	11	366
36-Inch Steel Piles—Vibratory Extraction .....			175	3	0	5	.3	7
36-Inch Steel Piles—Vibratory Driver .....			175	3	0	5	.3	7
36-Inch Steel Piles—Impact Driver (BCA) <sup>2</sup> .....	<sup>2</sup> 210	<sup>2</sup> 183		270	20	505	18	602
14-Inch Wood Piles—Vibratory Driver .....			144	0	0	0	0	0
14-Inch Wood Piles—Impact Driver .....	180	148		3	0	5	0	6

\* Low frequency (LF) cetaceans, Mid frequency (MF) cetaceans, High frequency (HF) cetaceans.

<sup>1</sup> All distances to the peak Level A thresholds are less than 33 feet (10 meters) except 18-in wood and concrete piles, which were measured at 16 feet.

<sup>2</sup> Bubble curtain attenuation (BCA). A bubble curtain will be used for impact driving and is assumed to reduce the source level by 10dB. Therefore, source levels were reduced by this amount for take calculations.

<sup>3</sup> Either 24-in or 36-in piles will be used for the Embarcadero Plaza and East Bayside Promenade, but not both. To be conservative, 36-in piles were used in the take estimation.

Level B Thresholds (Table 8)

Impact Pile Driving

For 24- and 36-inch steel piles using an impact hammer, projects include the driving of similarly sized piles at the Alameda Bay Ship and Yacht project; the Rodeo Dock Repair project; and the Amorco Wharf Repair project. During impact pile-driving associated with these projects, measured RMS sound levels averaged about 193 dB rms at 10m for 36-inch piles, and 190 dB rms at 10m for 24-inch piles (Caltrans 2012). It is estimated that an average of four of these piles would be installed per day with the vibratory hammer.

Projects conducted under similar circumstances with similar piles were reviewed to approximate the noise effects of the 14-inch wood piles. The best match for estimated noise levels is from the impact driving of timber piles at the Port of Benicia. Noise levels produced during this installation were an average of 158 dB rms at 33 feet (10 meters) from the pile (Caltrans 2012a). It is estimated that an average of four of these piles would be installed per day with a vibratory hammer.

Vibratory Pile-Driving

The best fit data for vibratory driving of 24-inch-diameter steel shell piles comes from projects completed in Shasta County, California, and the Stockton Marina, Stockton, California.

For these projects, the typical noise levels for pile-driving events were 163 dB rms at 33 feet (10 meters) (Caltrans 2012).

A review of available acoustic data for pile driving indicates that Test Pile Program at Naval Base Kitsap at Bangor, Washington (Illingsworth and Rodkin, 2013) provides the data for vibratory installation of 36-inch piles. For 36-inch-diameter piles driven by the Navy, the average level for all pile-driving events was 159 dB rms at 33 feet (10 meters). There was a considerable range in the rms levels measured across a pile-driving event; with measured values from 147 to 169 dB rms, the higher value is used in this analysis. It is estimated that an average of four of these piles would be extracted per day of pile driving during the proposed project. It is estimated that an average of four 14-inch polyurethane-coated wood piles would be installed per day of vibratory pile driving. The best match for estimated noise levels for vibratory driving of these piles is from the Hable River in Hampshire, England, where wooden piles were installed with this method. Rms noise levels produced during this installation were on average 142 dB rms at 33 feet (10 meters) from the pile (Nedwell *et al.*, 2005). Based on these measure levels, vibratory installation of the 14-inch polyurethane-coated wood-fender piles would exceed the 120 dB RMS Level B threshold over

a radius of 293 meters assuming practical spreading.

Approximately 350 wood and concrete piles, 12 to 18 inches in diameter, would be removed using a vibratory pile-driver. With the vibratory hammer activated, an upward force would be applied to the pile to remove it from the sediment. On average, 12 of these piles would be extracted per work day. Extraction time needed for each pile may vary greatly, but could require approximately 400 seconds (approximately 7 minutes) from an APE 400B King Kong or similar driver. The most applicable noise values for wooden pile removal from which to base estimates for the terminal expansion project are derived from measurements taken at the Port Townsend dolphin pile removal in the State of Washington. During vibratory pile extraction associated with this project, measured peak noise levels were approximately 164 dB at 16 m, and the rms was approximately 150 dB (WSDOT 2011). Applicable sound values for the removal of concrete piles could not be located, but they are expected to be similar to the levels produced by wooden piles described above, because they are similarly sized, nonmetallic, and will be removed using the same methods.

All calculated distances to, and the total area encompassed by, the marine mammal sound thresholds are provided

in Tables 7 and 8. The shutdown zone will be equivalent to the area over which Level A harassment may occur; however, a minimum 10 m shutdown zone will be applied to these zones as a precautionary measure intended to prevent the already unlikely possibility of physical interaction with

construction equipment and to further reduce any possibility of auditory injury. The disturbance zones will be equivalent to the area over which Level B harassment may occur, including 160 dB re 1 μPa (impact pile driving) and 120 dB re 1 μPa (vibratory pile driving) isopleths (Table 8). These zones may be

modified based on results from the hydroacoustic monitoring (see Appendix A of WETA's application).

Tables 6 and 7 show the expected underwater sound levels for pile driving activities and the estimated distances to the Level A (Table 7) and Level B (Table 8) thresholds.

**TABLE 8—EXPECTED PILE-DRIVING NOISE LEVELS AND DISTANCES OF LEVEL B THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER**

Project element requiring pile installation	Source levels at 10 meters (33 feet) (dB rms)	Distance to Level B threshold, in feet <sup>1</sup> (meters parentheses)	Area of potential Level B threshold exceedance acres (square kilometers)
		160/120 dB RMS (Level B) <sup>2</sup>	
<b>South Basin Pile Demolition and Removal</b>			
18-Inch Wood Piles—Vibratory Extraction .....	* 150	3,280 (1,600)	313 (2.3)
18-Inch Concrete Piles—Vibratory Extraction .....	* 150	3,280 (1,600)	313 (2.3)
36-Inch Steel Piles—Vibratory Extraction .....	169	60,979 (18,478)	21,380 (86.52)
<b>Embarcadero Plaza and East Bayside Promenade<sup>3</sup></b>			
36-Inch Steel Piles—Vibratory Driver .....	169	60,979 (18,478)	21,380 (86.52)
36-Inch Steel Piles—Impact Driver (BCA) .....	<sup>4</sup> 193	1,127 (341)	44 (0.18)
24-Inch Steel Piles—Vibratory Driver .....	163	24,276 (7,356)	9,407 (38.07)
24-Inch Steel Piles—Impact Driver (BCA) .....	<sup>4</sup> 190	711 (215)	21 (0.09)
<b>Fender Piles</b>			
14-Inch Wood Piles—Vibratory Driver .....	142	966 (293)	34 (0.14)
14-Inch Wood Piles—Impact Driver .....	158	24 (7)	0 (0)

\* This value was measured at 16m (not 10m).

<sup>1</sup> Where noise will not be blocked by land masses or other solid structures.

<sup>2</sup> For underwater noise, the Level B harassment (disturbance) threshold is 160 dB for impulsive noise and 120 dB for continuous noise.

<sup>3</sup> Either 24-in or 36-in piles will be used for the Embarcadero Plaza and East Bayside Promenade, but not both. To be conservative, 36-in piles were used in the take estimation.

<sup>4</sup> Bubble curtain attenuation (BCA). A bubble curtain will be used for impact driving and is expected to reduce the source level by 10dB.

**Marine Mammal Densities**

At-sea densities for marine mammal species have been determined for harbor seals and California sea lions in San Francisco Bay based on marine mammal monitoring by Caltrans for the San Francisco-Oakland Bay Bridge Project from 2000 to 2015 (Caltrans 2016) ; all other estimates here are determined by using observational data taken during marine mammal monitoring associated with the Richmond-San Rafael Bridge retrofit project, the San Francisco-Oakland Bay Bridge (SFOBB), which has been ongoing for the past 15 years, and anecdotal observational reports from local entities.

**Description of Take Calculation**

All estimates are conservative and include the following assumptions:

- All pilings installed at each site would have an underwater noise disturbance equal to the piling that causes the greatest noise disturbance (i.e., the piling farthest from shore)

installed with the method that has the largest zone of influence (ZOI). The largest underwater disturbance (Level B) ZOI would be produced by vibratory driving steel piles; therefore take estimates were calculated using the vibratory pile-driving ZOIs. The ZOIs for each threshold are not spherical and are truncated by land masses on either side of the channel which would dissipate sound pressure waves.

- Exposures were based on estimated total of 106 work days. Each activity ranges in amount of days needed to be completed (Table 1).
- In absence of site specific underwater acoustic propagation modeling, the practical spreading loss model was used to determine the ZOI.
- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-hour period; and,

- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

The estimation of marine mammal takes typically uses the following calculation:

For harbor seals and California sea lions: Level B exposure estimate = D (density) \* Area of ensonification) \* Number of days of noise generating activities.

For all other marine mammal species: Level B exposure estimate = N (number of animals) in the area \* Number of days of noise generating activities.

To account for the increase in California sea lion density due to El Niño, the daily take estimated from the observed density has been increased by a factor of 10 for each day that pile driving or removal occurs.

There are a number of reasons why estimates of potential instances of take may be overestimates of the number of individuals taken, assuming that available density or abundance estimates and estimated ZOI areas are

accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number represents the number of instances of take that may accrue to a smaller

number of individuals, with some number of animals being exposed more than once per individual. While pile driving and removal can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving/removal. The potential effectiveness of mitigation measures in reducing the

number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative, especially if each take is considered a separate individual animal, and especially for pinnipeds.

Table 9 lists the total estimated instances of expected take.

TABLE 9—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Pile type	Pile-driver type	Number of driving days	Estimated take by Level B harassment						
			Harbor seal	CA sea lion <sup>1</sup>	Northern elephant seal <sup>2</sup>	Harbor porpoise <sup>2</sup>	Gray whale <sup>2</sup>	Northern fur seal <sup>2</sup>	Bottlenose dolphin <sup>2</sup>
Wood/concrete pile removal.	Vibratory .....	30	74	80	NA	NA	NA	NA	NA
36-inch dolphin pile removal.	Vibratory .....	1	72	80	NA	NA	NA	NA	NA
Embarcadero Plaza 36-inch steel piles.	Vibratory <sup>3</sup> .....	65	4,668	5,060	NA	NA	NA	NA	NA
14-inch wood pile .....	Vibratory <sup>3</sup> .....	10	1	0	NA	NA	NA	NA	NA
Project Total (2016) <sup>4</sup> .	.....	106	4,798	5,200	26	9	2	10	30

<sup>1</sup> To account for potential El Niño conditions, take calculated from at-sea densities for California sea lion has been increased by a factor of 10.

<sup>2</sup> Take is not calculated by activity type for these species with a low potential to occur, only a yearly total is given.

<sup>3</sup> Piles of this type may also be installed with an impact hammer, which would reduce the estimated take.

<sup>4</sup> This total assumes the more conservative use of 36-inch steel piles used for the Embarcadero Plaza; however, an alternative would be to use 24 in steel piles, which would result in smaller take numbers.

*Description of Marine Mammals in the Area of the Specified Activity*

Harbor Seals

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing

for 15 years; from those data, Caltrans has produced at-sea density estimates for Pacific harbor seal of 0.83 animals per square kilometer for the fall season (Caltrans 2016). Using this density, the

potential average daily take for the areas over which the Level B harassment thresholds may be exceeded are estimated in Table 10.

TABLE 10—TAKE CALCULATION FOR HARBOR SEAL

Activity	Pile type	Density	Area (km <sup>2</sup> )	Number of days of activity	Take estimate
Vibratory driving and extraction .....	36-in steel pile <sup>1</sup> .....	0.83 animal/km <sup>2</sup> ...	86.53	65; 1	4,668; 72
Vibratory extraction .....	Wood and concrete piles .....	0.83 animal/km <sup>2</sup> ...	2.3	30	57
Vibratory driving .....	Wood piles .....	0.83 animal/km <sup>2</sup> ...	0.13	10	1

<sup>1</sup> The more conservative use of 36-inch steel piles for the Embarcadero Plaza was used here; however, an alternative would be to use 24 in steel piles, which would result in smaller take numbers (2,054 vs 4,668).

A total of 4,798 harbor seal takes are estimated for 2017 (Table 9). Level A take is not expected for harbor seal based on area of ensonification and density of the animals in that area. While the Level A zone is relatively large for this hearing group (approximately 270 m), there will be 2 MMOs monitoring the zone in the most

advantageous locations to spot marine mammals. If a harbor seal (or any other marine mammal) is seen approaching the Level A zone, a shutdown will be in place. We do not anticipate that Level A harassment would occur.

California Sea Lion

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing

for 15 years; from those data, Caltrans has produced at-sea density estimates for California sea lion of 0.09 animal per square kilometer for the post-breeding season (Caltrans 2016). Using this density, the potential average daily take for the areas over which the Level B harassment thresholds may be exceeded is estimated in Table 11.

TABLE 11—TAKE CALCULATION FOR CALIFORNIA SEA LION

Activity	Pile type	Density	Area (km <sup>2</sup> )	Number of days of activity	Take estimate
Vibratory driving and extraction .....	36-in steel pile <sup>1</sup> .....	0.09 animal/km <sup>2</sup>	86.53	65; 1	* 5,060; * 80
Vibratory extraction .....	Wood and concrete piles .....	0.09 animal/km <sup>2</sup> ...	2.3	30	* 60
Vibratory driving .....	Wood piles .....	0.09 animal/km <sup>2</sup> ...	0.13	10	0

\* All California sea lion estimates were multiplied by 10 to account for the increased occurrence of this species due to El Niño.

<sup>1</sup> The more conservative use of 36-inch steel piles for the Embarcadero Plaza was used here; however, an alternative would be to use 24 in steel piles, which would result in smaller take numbers (2,230 vs 5,060).

All California sea lion estimates were multiplied by 10 to account for the increased occurrence of this species due to El Niño. A total of 5,200 California sea lion takes is estimated for 2017 (Table 9). Level A take is not expected for California sea lion based on area of ensonification and density of the animals in that area.

#### Northern Elephant Seal

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced an estimated at-sea density for northern elephant seal of 0.03 animal per square kilometer (Caltrans, 2016). Most sightings of northern elephant seal in San Francisco Bay occur in spring or early summer, and are less likely to occur during the periods of in-water work for this project (June through November). As a result, densities during pile driving and removal for the proposed action would be much lower. Therefore, we estimate that it is possible that a lone northern elephant seal may enter the Level B harassment area once per week during pile driving or removal, for a total of 26 takes in 2017 (Table 9). Level A take of Northern elephant seal is not requested, nor is it proposed to be authorized because although one animal may approach the large Level B zones, it is not expected that it will continue in the area of ensonification into the Level A zone. Further, if the animal does approach the Level A zone, construction will be shut down. We do not anticipate that Level A harassment would occur.

#### Northern Fur Seal

During the breeding season, the majority of the worldwide population is found on the Pribilof Islands in the southern Bering Sea, with the remaining animals spread throughout the North Pacific Ocean. On the coast of California, small breeding colonies are present at San Miguel Island off southern California, and the Farallon Islands off central California (Carretta *et al.*, 2014). Northern fur seal are a pelagic species and are rarely seen near the shore away from breeding areas.

Juveniles of this species occasionally strand in San Francisco Bay, particularly during El Niño events, for example, during the 2006 El Niño event, 33 fur seals were admitted to the Marine Mammal Center (TMMC 2016). Some of these stranded animals were collected from shorelines in San Francisco Bay. Due to the recent El Niño event, northern fur seals were observed in San Francisco bay more frequently, as well as strandings all along the California coast and inside San Francisco Bay (TMMC, personal communication); a trend that may continue this summer through winter if El Niño conditions occur. Because sightings are normally rare; instances recently have been observed, but are not common, and based on estimates from local observations (TMMC, personal communication), it is estimated that ten northern fur seals will be taken in 2017 (Table 9). Level A take is not requested or proposed to be authorized for this species.

#### Harbor Porpoise

In the last six decades, harbor porpoises were observed outside of San Francisco Bay. The few harbor porpoises that entered were not sighted past central Bay close to the Golden Gate Bridge. In recent years, however, there have been increasingly common observations of harbor porpoises in central, north, and south San Francisco Bay. Porpoise activity inside San Francisco Bay is thought to be related to foraging and mating behaviors (Keener 2011; Duffy 2015). According to observations by the Golden Gate Cetacean Research team as part of their multi-year assessment, over 100 porpoises may be seen at one time entering San Francisco Bay; and over 600 individual animals are documented in a photo-ID database. However, sightings are concentrated in the vicinity of the Golden Gate Bridge and Angel Island, north of the project area, with lesser numbers sighted south of Alcatraz and west of Treasure Island (Keener 2011). Harbor porpoise

generally travel individually or in small groups of two or three (Sekiguchi 1995).

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced an estimated at-sea density for harbor porpoise of 0.021 animal per square kilometer (Caltrans 2016). However, this estimate would be an overestimate of what would actually be seen in the project area. In order to estimate a more realistic take number, we assume it is possible that a small group of individuals (three harbor porpoises) may enter the Level B harassment area on as many as three days of pile driving or removal, for a total of nine harbor porpoise takes per year (Table 9). It is possible that harbor porpoise may enter the Level A harassment zone for high frequency cetaceans; however, 2 MMOs will be monitoring the area and WETA would implement a shutdown for the entire zone if a harbor porpoise (or any other marine mammal) approaches the Level A zone; therefore Level A take is not being requested, nor authorized for this species.

#### Gray Whale

Historically, gray whales were not common in San Francisco Bay. The Oceanic Society has tracked gray whale sightings since they began returning to San Francisco Bay regularly in the late 1990s. The Oceanic Society data show that all age classes of gray whales are entering San Francisco Bay, and that they enter as singles or in groups of up to five individuals. However, the data do not distinguish between sightings of gray whales and number of individual whales (Winning 2008). Caltrans Richmond-San Rafael Bridge project monitors recorded 12 living and two dead gray whales in the surveys performed in 2012. All sightings were in either the central or north Bay; and all but two sightings occurred during the months of April and May. One gray whale was sighted in June, and one in October (the specific years were unreported). It is estimated that two to six gray whales enter San Francisco Bay in any given year. Because construction

activities are only occurring during a maximum of 106 days in 2017, it is estimated that two gray whales may potentially enter the area during the construction period, for a total of 2 gray whale takes in 2017 (Table 9).

#### Bottlenose Dolphin

Since the 1982–83 El Niño, which increased water temperatures off California, bottlenose dolphins have been consistently sighted along the central California coast (Carretta *et al.*, 2008). The northern limit of their regular range is currently the Pacific coast off San Francisco and Marin County, and they occasionally enter San Francisco Bay, sometimes foraging for fish in Fort Point Cove, just east of the Golden Gate Bridge. In the summer of 2015, a lone bottlenose dolphin was seen swimming in the Oyster Point area of South San Francisco (GGCR 2016). Members of this stock are transient and make movements up and down the coast, and into some estuaries, throughout the year. Bottlenose dolphins are being observed in San Francisco bay more frequently in recent years (TMMC, personal communication). Groups with an average group size of five animals enter the bay and occur near Yerba Buena Island once per week for a two week stint and then depart the bay (TMMC, personal communication). Assuming groups of five individuals may enter San Francisco Bay approximately three times during the construction activities, and may enter the ensonified area once per week over the two week stint, we estimate 30 takes of bottlenose dolphins for 2017 (Table 9).

#### Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, “and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the

least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully balance two primary factors: (1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat—which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and the likelihood of effective implementation, and; (2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see *Estimated Take by Incidental Harassment*); these values were used to develop mitigation measures for pile driving and removal activities at the ferry terminal. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, WETA would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and WETA staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

#### Monitoring and Shutdown for Construction Activities

The following measures would apply to WETA’s mitigation through shutdown and disturbance zones:

**Shutdown Zone**—For all pile driving activities, WETA will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the auditory injury criteria for cetaceans and pinnipeds. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described previously under *Potential*

*Effects of the Specified Activity on Marine Mammals*, serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 7. However, a minimum shutdown zone of 10 m will be established during all pile driving activities, regardless of the estimated zone.

**Disturbance Zone**—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.*, shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting instances of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see *Proposed Monitoring and Reporting*). Nominal radial distances for disturbance zones are shown in Table 8.

Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.*, what may be reasonably observed by visual observers stationed within the turning basin) would be observed. In order to document observed instances of harassment, monitors record all marine mammal observations, regardless of location. The observer’s location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

**Monitoring Protocols**—Monitoring would be conducted before, during, and after pile driving and vibratory removal activities. In addition, observers shall record all instances of marine mammal

occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from 15 minutes prior to initiation through thirty minutes post-completion of pile driving and removal activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes. Please see the Monitoring Plan ([www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm)), developed by WETA in agreement with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. A minimum of two observers will be required for all pile driving/removal activities. However, if after performing hydroacoustic monitoring the monitoring results indicate that the Level A zones for impact driving of 24-in and 36-in steel piles is considerably smaller than expected, with concurrence from NMFS, WETA may reduce the number of MMOs for impact driving to one. Marine Mammal Observer (MMO) requirements for construction actions are as follows:

(a) Independent observers (*i.e.*, not construction personnel) are required;

(b) At least one observer must have prior experience working as an observer;

(c) Other observers (that do not have prior experience) may substitute education (undergraduate degree in biological science or related field) or training for experience;

(d) Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

(e) NMFS will require submission and approval of observer CVs.

Qualified MMOs are trained biologists, and need the following additional minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for

discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Ability to conduct field observations and collect data according to assigned protocols;

(c) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(d) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(e) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(f) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.*, when not obscured by dark, rain, fog, *etc.*). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of small cetaceans and pinnipeds, and thirty minutes for gray whales. Monitoring will be conducted throughout the time required to drive a pile.

(4) Using delay and shut-down procedures, if a species for which authorization has not been granted (including but not limited to Guadalupe

fur seals and humpback whales) or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level B harassment zone, activities will shut down immediately and not restart until the animals have been confirmed to have left the area.

#### *Soft Start*

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in "bouncing" of the hammer as it strikes the pile, resulting in multiple "strikes." For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

#### *Sound Attenuation Devices*

Two types of sound attenuation devices would be used during impact pile-driving: Bubble curtains and pile cushions. WETA would employ the use of a bubble curtain during impact pile-driving, which is assumed to reduce the source level by 10 dB. Bubble curtains will not be used during impact driving of wood piles because the sound levels produced would be significantly less than those from steel piles. WETA would also employ the use of 12-inch-thick wood cushion block on impact hammers to attenuate underwater sound levels.

We have carefully evaluated WETA's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the

accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal);

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only);

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only);

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only);

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time; and

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of WETA's proposed measures, as well as any other potential measures that may be relevant to the specified activity, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on

populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species in action area (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) population, species, or stock;

- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

- Mitigation and monitoring effectiveness.

WETA's proposed monitoring and reporting is also described in their Marine Mammal Monitoring Plan, on the Internet at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm).

### Hydroacoustic Monitoring

Hydroacoustic monitoring will be conducted in consultation with the California Department of Fish and Wildlife (CDFW) during a minimum of ten percent of all pile driving activities. The monitoring will be done in accordance with the methodology outlined in this Hydroacoustic Monitoring Plan (see Appendix A of WETA's application for more information on this plan, including the methodology, equipment, and reporting information). The monitoring will be conducted based on the following:

- Be based on the dual metric criteria (Popper *et al.*, 2006) and the

accumulated sound exposure level (SEL);

- Establish field locations that will be used to document the extent of the area experiencing 187 decibels (dB) SEL accumulated;

- Establish the distance to the Marine Mammal Level A and Level B shutdown and Harassment zones;

- Describe the methods necessary to continuously measure underwater noise on a real-time basis, including details on the number, location, distance and depth of hydrophones, and associated monitoring equipment;

- Provide a means of recording the time and number of pile strikes, the peak sound energy per strike, and interval between strikes; and

- Provide all monitoring data to the CDFW and NMFS.

### Visual Marine Mammal Observations

WETA will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All marine mammal observers (MMOs) will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. A minimum of two MMOs will be required for all pile driving/removal activities, unless only impact driving is to occur on that day, in which case only one observer will be required. WETA will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, WETA would implement the following procedures for pile driving and removal:

- MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible;

- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals;

- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted; and

- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. The monitoring biologists

will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and WETA.

In additions, the MMO(s) will survey the potential Level A and nearby Level B harassment zones (areas within approximately 2,000 feet of the pile-driving area observable from the shore) on 2 separate days—no earlier than 7 days before the first day of construction—to establish baseline observations. Monitoring will be timed to occur during various tides (preferably low and high tides) during daylight hours from locations that are publicly accessible (e.g., Pier 14 or the Ferry Plaza). The information collected from baseline monitoring will be used for comparison with results of monitoring during pile-driving activities.

#### Data Collection

We require that observers use approved data forms. Among other pieces of information, WETA will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, WETA will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Distance from pile driving or removal activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (e.g., shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

#### Reporting

A draft report would be submitted to NMFS within 90 days of the completion

of marine mammal monitoring, or sixty days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving and removal days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report.

#### Analyses and Preliminary Determinations

##### Negligible Impact Analysis

NMFS has defined negligible impact as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival” (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and removal activities associated with the ferry terminal construction project, as outlined previously, have the potential to disturb

or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving and removal occurs.

No injury, serious injury, or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation (impact driving is included only as a contingency). Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient “notice” through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. WETA will also employ the use of 12-inch-thick wood cushion block on impact hammers, and a bubble curtain as sound attenuation devices. Environmental conditions in San Francisco Ferry Terminal mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury.

WETA’s proposed activities are localized and of relatively short duration (a maximum of 106 days for pile driving and removal in the first year). The entire project area is limited to the San Francisco ferry terminal area and its immediate surroundings. These localized and short-term noise exposures may cause short-term behavioral modifications in harbor seals, northern fur seals, northern elephant seals, California sea lions, harbor porpoises, bottlenose dolphins, and gray whales. Moreover, the proposed mitigation and monitoring measures are expected to reduce the likelihood of injury and behavior exposures. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be within the ensonified area during the construction time frame.

The project also is not expected to have significant adverse effects on affected marine mammals’ habitat. The

project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff 2006; Lerma 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- Injurious takes are not expected due to the presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable impact;
- Level B harassment may consist of, at worst, temporary modifications in behavior (e.g. temporary avoidance of habitat or changes in behavior);
- The lack of important feeding, pupping, or other areas in the action area;
- The high level of ambient noise already in the ferry terminal area; and
- The small percentage of the stock that may be affected by project activities (< 15 percent for all species).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from WETA's ferry terminal construction activities will have a negligible impact

on the affected marine mammal species or stocks.

*Small Numbers Analysis*

Table 12 details the number of instances that animals could be exposed to received noise levels that could cause Level B behavioral harassment for the proposed work at the ferry terminal project site relative to the total stock abundance. The numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations even if each estimated instance of take occurred to a new individual—an extremely unlikely scenario. The total percent of the population (if each instance was a separate individual) for which take is requested is approximately 15 percent for harbor seals, approximately 7 percent for bottlenose dolphins, less than 2 percent for California sea lions, and less than 1 percent for all other species (Table 12). For pinnipeds, especially harbor seals occurring in the vicinity of the ferry terminal, there will almost certainly be some overlap in individuals present day-to-day, and the number of individuals taken is expected to be notably lower. We preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

TABLE 12—ESTIMATED NUMBERS AND PERCENTAGE OF STOCK THAT MAY BE EXPOSED TO LEVEL B HARASSMENT

Species	Proposed authorized takes	Stock(s) abundance estimate <sup>1</sup>	Percentage of total stock (%)
Harbor Seal ( <i>Phoca vitulina</i> ) California stock .....	4,798	30,968	15.49
California sea lion ( <i>Zalophus californianus</i> ) U.S. Stock .....	5,200	296,750	1.75
Northern elephant seal ( <i>Mirounga angustirostris</i> ) California breeding stock .....	26	179,000	0.015
Northern fur seal ( <i>Callorhinus ursinus</i> ) California stock .....	10	14,050	0.07
Harbor Porpoise ( <i>Phocoena phocoena</i> ) San Francisco-Russian River Stock .....	9	9,886	0.09
Gray whale ( <i>Eschrichtius robustus</i> ) Eastern North Pacific stock .....	2	20,990	0.01
Bottlenose dolphin ( <i>Tursiops truncatus</i> ) California coastal stock .....	30	453	6.6

<sup>1</sup> All stock abundance estimates presented here are from the 2015 Pacific Stock Assessment Report.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act (ESA)**

No incidental take of ESA-listed marine mammal species is proposed for

authorization or expected to result from these activities. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

**National Environmental Policy Act (NEPA)**

NMFS published an EA in 2016 on WETA's ferry terminal construction activities. NMFS found that there would be no significant impacts to the human environment and signed a finding of no significant impact (FONSI) on June 28, 2016. Because the activities and analysis are the same as WETA's 2016 activities,

NMFS believes it appropriate to use the existing EA and FONSI for WETA's 2017 activities.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WETA for conducting their Downtown San Francisco Ferry Terminal Expansion Project, South Basin Improvements Project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording

contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid for one year from June 1, 2017 through May 31, 2018.

2. This IHA is valid only for pile driving and removal activities

associated with the Downtown San Francisco Ferry Terminal Expansion Project, South Basin Improvements Project in San Francisco Bay, CA.

3. General Conditions

(a) A copy of this IHA must be in the possession of WETA, its designees, and

work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are summarized in Table 1.

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 for numbers of take authorized.

TABLE 1—AUTHORIZED TAKE NUMBERS

Species	Authorized take	
	Level A	Level B
Harbor seal .....	0	4,798
California sea lion .....	0	5,200
Northern elephant seal .....	0	26
Northern fur seal .....	0	10
Harbor porpoise .....	0	9
Gray whale .....	0	2
Bottlenose dolphin .....	0	30

(d) The taking by injury (Level A harassment), serious injury, or death of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) WETA shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and WETA staff prior to the start of all pile driving and removal activities, and when new personnel join the work.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures.

(a) For all pile driving and removal, WETA shall implement a minimum shutdown zone of 10 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(b) For in-water heavy machinery work other than pile driving (e.g., standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 meters, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

(c) WETA shall establish monitoring locations as described below. Please also refer to the Marine Mammal Monitoring Plan (see [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm)).

i. For all pile driving and removal activities, a minimum of two observers shall be deployed, with one positioned to achieve optimal monitoring of the shutdown zone and the second

positioned to achieve optimal monitoring of surrounding waters of the ferry terminal and portions of San Francisco Bay. If practicable, the second observer should be deployed to an elevated position with clear sight lines to the ferry terminal.

ii. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals. Observations within the ferry terminal shall be distinguished from those in the nearshore waters of San Francisco Bay.

iii. All observers shall be equipped for communication of marine mammal observations amongst themselves and to other relevant personnel (e.g., those necessary to effect activity delay or shutdown).

(d) Monitoring shall take place from fifteen minutes prior to initiation of pile driving and removal activity through thirty minutes post-completion of pile driving and removal activity. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (i.e., the entire shutdown zone and surrounding waters must be visible to the naked eye).

(e) If a marine mammal approaches or enters the shutdown zone, all pile driving and removal activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may

not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of small cetaceans and pinnipeds and 30 minutes for gray whales.

(f) Level A and Level B zones may be modified if additional hydroacoustic measurements of construction activities have been conducted and NMFS has approved of the revised zones.

(g) Using delay and shut-down procedures, if a species for which authorization has not been granted (including but not limited to Guadalupe fur seals and humpback whales) or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level B harassment zone, activities will shut down immediately and not restart until the animals have been confirmed to have left the area.

(h) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start and in accordance with the monitoring plan, and shall include instruction on species identification (sufficient to distinguish the species listed in 3(b)), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups

of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

(j) WETA shall use soft start techniques recommended by NMFS for impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(j) Sound attenuation devices—Approved sound attenuation devices (e.g. bubble curtain, pile cushion) shall be used during impact pile driving operations. WETA shall implement the necessary contractual requirements to ensure that such devices are capable of achieving optimal performance, and that deployment of the device is implemented properly such that no reduction in performance may be attributable to faulty deployment.

(k) Pile driving shall only be conducted during daylight hours.

#### 5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving and removal activities. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) WETA shall collect sighting data and behavioral responses to pile driving and removal for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

#### 6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for projects at the San Francisco Ferry Terminal, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see [www.nmfs.noaa.gov/pr/permits/](http://www.nmfs.noaa.gov/pr/permits/)

[incidental/construction.htm](#)), and shall also include:

i. Detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any.

ii. Description of attempts to distinguish between the number of individual animals taken and the number of incidents of take, such as ability to track groups or individuals.

iii. An estimated total take estimate extrapolated from the number of marine mammals observed during the course of construction activities, if necessary.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, WETA shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

- A. Time and date of the incident;
- B. Description of the incident;
- C. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- D. Description of all marine mammal observations in the 24 hours preceding the incident;
- E. Species identification or description of the animal(s) involved;
- F. Fate of the animal(s); and
- G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with WETA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WETA may not resume their activities until notified by NMFS.

ii. In the event that WETA discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), WETA shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WETA

to determine whether additional mitigation measures or modifications to the activities are appropriate.

iii. In the event that WETA discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), WETA shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. WETA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

#### Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHAs for WETA's ferry terminal construction activities. Please include with your comments any supporting data or literature citations to help inform our final decision on WETA's request for MMPA authorization.

Dated: April 10, 2017.

**Angela Somma,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2017-07498 Filed 4-12-17; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Expanded Vessel Monitoring System Requirement in the Pacific Coast Groundfish Fishery.

*OMB Control Number:* 0648-0573.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved information collection).

*Number of Respondents:* 1,000.

*Average Hours per Response:* VMS installation: 4 hours; VMS maintenance: 4 hours; installation, exemption and activation reports: 5 minutes each; and declaration reports: 4 minutes.

*Burden Hours:* 771.

*Needs and Uses:* This request is for extension of a currently approved information collection.

The National Oceanic and Atmospheric Administration (NOAA) has established large-scale depth-based management areas, referred to as Groundfish Conservation Areas (GCAs), where groundfish fishing is prohibited or restricted. These areas were specifically designed to reduce the catch of species while allowing healthy fisheries to continue in areas and with gears where little incidental catch of overfished species is likely to occur. Because NOAA needs methods to effectively enforce area restrictions, certain commercial fishing vessels are required to install and use a vessel monitoring system (VMS) that automatically send hourly position reports. Exemptions from the reporting requirement are available for inactive vessels or vessels fishing outside the monitored area. The vessels are also required to declare what gear will be used.

To ensure the integrity of the GCAs and Rockfish Conservation Areas, a pilot VMS program was implemented on January 1, 2004. The pilot program required vessels registered to Pacific Coast groundfish fishery limited entry permits to carry and use VMS transceiver units while fishing off the coasts of Washington, Oregon and California. On January 1, 2007, the VMS program coverage was expanded on to include all open access fisheries in addition to the limited entry fisheries. Finally, in 2010, NMFS expanded the declaration reports to include several more limited entry categories.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-5806.

Dated: April 10, 2017.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2017-07497 Filed 4-12-17; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Advisory Committee on Investigation Prosecution and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

**AGENCY:** General Counsel of the Department of Defense, Department of Defense.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation Prosecution and Defense of Sexual Assault in the Armed Forces will take place.

**DATES:** Open to the public, Friday, April 28, 2017, from 10:00 a.m. to 5:15 p.m.

**ADDRESSES:** One Liberty Center, 875 N. Randolph Street, Suite 1432, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Dwight Sullivan, 703-695-1055 (Voice), 703-693-3903 (Facsimile), [dwight.h.sullivan.civ@mail.mil](mailto:dwight.h.sullivan.civ@mail.mil) (Email). Mailing address is DACIPAD, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. Web site: <http://dacipad.whs.mil/>. The most up-to-date changes to the meeting agenda can be found on the Web site.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.140 and 102-3.150.

For information contact Ms. Julie Carson, DAC-IPAD, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. Email: [whs.pentagon.em.mbx.dacipad@mail.mil](mailto:whs.pentagon.em.mbx.dacipad@mail.mil). Phone: (703) 693-3849. Web site: <http://dacipad.whs.mil/>. A copy of the meeting agenda and any updates or changes to the agenda, including the location and individual speakers not identified at the time of this notice, as well as other materials provided to Committee members for use at the public meeting, may be obtained at the

meeting or from the DAC-IPAD Web site. The Committee's Designated Federal Official is Mr. Dwight Sullivan, Associate Deputy General Counsel for Military Justice, U.S. Department of Defense, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301-1600.

*Purpose of the Meeting:* In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), Congress tasked the DAC-IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the second public meeting held by the DAC-IPAD. At this meeting, the Committee will receive a presentation on the mechanics of a sexual assault case from reporting to referral followed by a briefing from the Department of Defense Office of Sexual Assault Prevention and Response on its annual sexual assault reporting data. The Committee will conclude the meeting with a strategic planning session.

### Agenda

- 8:30 a.m.–10:00 a.m. Administrative Work (41 CFR 102-3.160, not subject to notice & open meeting requirements)
- 10:00 a.m.–10:15 a.m. Welcome and Introduction
- 10:15 a.m.–12:15 p.m. Presentation on the Mechanics of a Sexual Assault Case from Reporting to Referral
  - The Judge Advocate General's Legal Center and School, Criminal Law Department Faculty
- 12:15 p.m.–1:00 p.m. Lunch
- 1:00 p.m.–2:00 p.m. Presentation on the Mechanics of a Sexual Assault Case from Reporting to Referral (Cont.)
  - The Judge Advocate General's Legal Center and School, Criminal Law Department Faculty
- 2:00 p.m.–4:00 p.m. Briefing on Department of Defense Annual Sexual Assault Reporting Data
  - Dr. Nathan Galbreath, Acting Director, Sexual Assault Prevention and Response Office (SAPRO), U.S. Department of Defense
- 4:00 p.m.–5:00 p.m. DAC-IPAD Strategic Planning Session
- 5:00 p.m.–5:15 p.m. Public Comment
- 5:15 p.m. Meeting Adjourned

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the

public. Seating is limited and is on a first-come basis. Visitors are required to sign in at the One Liberty Center security desk and must leave government-issued photo identification on file while in the building.

Department of Defense Common Access Card (CAC) holders who do not have authorized access to One Liberty Center must provide an alternate form of government-issued photo identification to leave on file with security while in the building. All visitors must pass through a metal detection security screening. In the event the Office of Personnel Management closes the government due to inclement weather or for any other reason, please consult the Web site for any changes to the public meeting date or time. Individuals requiring special accommodations to access the public meeting should contact the DAC-IPAD at [whs.pentagon.em.mbx.dacipad@mail.mil](mailto:whs.pentagon.em.mbx.dacipad@mail.mil) at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

*Written Statements:* Pursuant to 41 CFR 102-3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session. Written comments must be received by the DAC-IPAD at least five (5) business days prior to the meeting date so that they may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC-IPAD at [whs.pentagon.em.mbx.dacipad@mail.mil](mailto:whs.pentagon.em.mbx.dacipad@mail.mil) in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC-IPAD operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement pertaining to the agenda for the public meeting, a written statement must be submitted as above along with a request to provide an oral statement. After reviewing the written comments and the oral statement, the Chair and the Designated Federal Official will determine who will be permitted to make an oral presentation of their issue during the public comment portion of this meeting. This determination is at the sole discretion of the Chair and Designated Federal Official, will depend on the time available and relevance to the Committee's activities for that meeting,

and will be on a first-come basis. When approved in advance, oral presentations by members of the public will be permitted from 5:00 p.m. to 5:15 p.m. on April 28, 2017, in front of the Committee members.

Dated: April 10, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017-07515 Filed 4-12-17; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board Chairs

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:**

Wednesday, May 10, 2017, 8:00 a.m.–5:00 p.m.

Thursday, May 11, 2017, 9:00 a.m.–12:00 p.m.

**ADDRESSES:** Luther F. Carson Four Rivers Center, 100 Kentucky Avenue, Myre River Room, Paducah, Kentucky 42001.

**FOR FURTHER INFORMATION CONTACT:**

David Borak, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586-9928.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda Topics**

*Wednesday, May 10, 2017*

- EM Program Update
- EM SSAB Chairs' Round Robin
- Waste Disposition Update
- Budget and Planning Update
- Board Business

*Thursday, May 11, 2017*

- DOE Headquarters News and Views
- Field Operations Update
- Board Business

*Public Participation:* The EM SSAB Chairs welcome the attendance of the public at their advisory committee

meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, David Borak, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact David Borak. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following Web site: <https://energy.gov/em/services/communication-engagement/em-site-specific-advisory-board-em-ssab/chairs-meetings>.

Issued at Washington, DC, on April 7, 2017.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2017-07419 Filed 4-12-17; 8:45 am]

**BILLING CODE 6450-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0016, 3060-0017, 3060-0027, 3060-0837, 3060-0928, 3060-0932, 3060-1176, 3060-1177]

### Information Collections Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before June 12, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-0016.

*Title:* FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule C (Former FCC Form 346); Sections 74.793(d) and 74.787, Low Power Television (LPTV) Out-of-Core Digital Displacement Application; Section 73.3700(g)(1)-(3), Post-Incentive Auction Licensing and Operations; Section 74.799, Low Power Television and TV Translator Channel Sharing.

*Form No.:* FCC Form 2100, Schedule C.

*Type of Review:* Revision of a currently approved information collection.

*Respondents:* Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

*Number of Respondents and Responses:* 4,460 respondents and 4,460 responses.

*Estimated Time per Response:* 2.5-7 hours (total of 9.5 hours).

*Frequency of Response:* One-time reporting requirement; on occasion

reporting requirement; third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i), 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 42,370 hours.

*Annual Cost Burden:* \$24,744,080.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* FCC Form 2100, Schedule C is used by licensees/permittees/applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator or TV Booster broadcast station.

The Commission is submitting a revision to this information collection which results from the rule provisions adopted in the FCC 17-29. On March 23, 2017, the Commission adopted a Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12-268, MB Docket No. 03-185, MB Docket No. 15-137, FCC 17-29 ("Report and Order"). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule C itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 section 74.799 (previously 74.800) permits LPTV and TV translator stations to seek approval to share a single television channel with other LPTV and TV translator stations and with full power and Class A stations. Stations interested in terminating operations and sharing another station's channel must submit FCC Form 2100 Schedule C in order to have the channel sharing arrangement approved. If the sharing station is proposing to make changes to its facility to accommodate the channel sharing, it must also file FCC Form 2100 Schedule C.

*OMB Control Number:* 3060-0017.

*Title:* Application for Media Bureau Audio and Video Service Authorization, FCC 2100, Schedule D.

*Form Number:* FCC Form 2100, Schedule D.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

*Number of Respondents/Responses:* 570 respondents; 570 responses.

*Estimated Hours per Response:* 1.5 hours per response.

*Frequency of Response:* One time reporting requirement; On occasion reporting requirement.

*Total Annual Burden:* 855 hours.

*Total Annual Cost:* \$68,400.

*Obligation to Respond:* Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

*Needs and Uses:* Applicants/licensees/permittees are required to file FCC Form 2100, Schedule D when applying for a Low Power Television, TV Translator or TV Booster Station License.

The Commission is submitting this revising this information collection which results from the rule provisions adopted in the FCC 17-29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12-268, MB Docket No. 03-185, MB Docket No. 15-137, FCC 17-29 ("Report and Order"). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule D itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 section 74.799 (previously 74.800) permits LPTV and TV translator stations to seek approval to share a single television channel with other LPTV and TV translator stations and with full power and Class A stations. Stations interested in terminating operations and sharing another station's channel must submit FCC Form 2100 Schedule D in order to complete the licensing of their channel sharing arrangement.

*OMB Control No.:* 3060-0027.

*Title:* Application for Construction Permit for Commercial Broadcast Station, FCC Form 301; FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization,

Schedule A; 47 CFR 73.3700(b)(1) and (2) and 73.3800, Post Auction Licensing.

*Form No.:* FCC Form 2100, Schedule A.

*Type of Review:* Revision of a currently approved information collection.

*Respondents:* Business or other for-profit entities; Not for profit institutions; State, local or Tribal Government.

*Number of Respondents and Responses:* 3,090 respondents and 6,526 responses.

*Estimated Time per Response:* 1–6.25 hours.

*Frequency of Response:* One-time reporting requirement; On occasion reporting requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 15,317 hours.

*Annual Cost Burden:* \$62,444,288.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The Commission is submitting this revision to this information collection which results from the rule provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (“Report and Order”). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule A itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 CFR 73.3800 allows full power television stations to channel share with other full power stations, Class A, LPTV and TV translator stations outside of the incentive auction context. Full power stations file FCC Form 2100, Schedule A in order to obtain Commission approval to operate on a shared channel.

*OMB Control No.:* 3060–0837.

*Title:* FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule B (Former FCC Form 302–DTV), Section 73.3700(b)(3) and Section 73.3700(h)(2).

*Form No.:* FCC Form 2100, Schedule B.

*Type of Review:* Revision of a currently approved information collection.

*Respondents:* Business or other for-profit entities; Not for profit institutions.

*Number of Respondents and Responses:* 975 respondents and 975 responses.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* One-time reporting requirement and on occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 307, 308, 309, and 319 of the Communications Act of 1934, as amended; the Community Broadcasters Protection Act of 1999, Public Law 106–113, 113 Stat. Appendix I at pp. 1501A–594–1501A–598 (1999) (codified at 47 U.S.C. 336(f)); and the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

*Total Annual Burden:* 1,950 hours.

*Annual Cost Burden:* \$585,945.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* FCC Form 2100, Schedule B (formerly FCC Form 302–DTV) is used by licensees and permittees of full power broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 CFR 73.1675(c) or 73.1690(c).

The Commission is submitting this revision to this information collection which results from the rule provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (“Report and Order”). This document approved channel sharing outside of the incentive auction context between full power,

Class A, (Low Power Television) LPTV and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule B itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 CFR 73.3800 allows full power television stations to channel share with other full power stations, Class A, LPTV and TV translator stations outside of the incentive auction context. Full power stations file FCC Form 2100, Schedule B in order to complete the licensing of their shared channel.

*OMB Control No.:* 3060–0928.

*Title:* FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule F (Formerly FCC 302–CA); 47 CFR 73.6028.

*Form No.:* FCC Form 2100, Schedule F.

*Type of Review:* Revision of a currently approved information collection.

*Respondents:* Business or other for-profit entities; Not for profit institutions; State, local or Tribal Government.

*Number of Respondents and Responses:* 975 respondents and 975 responses.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* One-time reporting requirement and on occasion reporting requirement.

*Total Annual Burden:* 1,950 hours.

*Annual Cost Burden:* \$307,125.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The FCC Form 2100, Schedule F is used by Low Power TV (LPTV) stations that seek to convert to Class A status; existing Class A stations seeking a license to cover their authorized construction permit facilities; and Class A stations entering into a channel sharing agreement. The FCC Form 2100, Schedule F requires a series of certifications by the Class A applicant as prescribed by the Community Broadcasters Protection Act of 1999 (CBPA). Licensees will be required to provide weekly announcements to their listeners: (1) Informing them that the applicant has applied for a Class A license and (2) announcing the public’s opportunity to comment on the application prior to Commission action.

The Commission is submitting this revision to this information collection, which results from the provisions adopted in the FCC 17–29. On March

23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (“Report and Order”). This document approved channel sharing outside of the incentive auction context between full power, Class A, LPTV and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule F itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 CFR 73.6028 permits Class A stations to seek approval to share a single television channel with LPTV, TV translator, full power and Class A television stations. Class A stations interested in terminating operations and sharing another station’s channel must submit FCC Form 2100 Schedule F in order to complete the licensing of their channel sharing arrangement.

*OMB Control No.:* 3060–0932.

*Title:* FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule E (Former FCC Form 301–CA); 47 CFR Sections 73.3700(b)(1)(i)–(v) and (vii), (b)(2)(i) and (ii); 47 CFR Section 74.793(d)

*Form No.:* FCC Form 2100, Schedule E (Application for Media Bureau Audio and Video Service Authorization) (Former FCC Form 301–CA).

*Type of Review:* Revision of a currently approved information collection.

*Respondents:* Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

*Number of Respondents and Responses:* 745 respondents and 745 responses.

*Estimated Time per Response:* 2.25 hours–6 hours (for a total of 8.25 hours).

*Frequency of Response:* One-time reporting requirement; On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act) and the Community Broadcasters Protection Act of 1999.

*Total Annual Burden:* 6,146 hours.

*Annual Cost Burden:* \$4,035,550.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* FCC Form 2100, Schedule E (formerly FCC Form 301–CA) is to be used in all cases by a Class A television station licensees seeking to make changes in the authorized facilities of such station. FCC Form 2100, Schedule E requires applicants to certify compliance with certain statutory and regulatory requirements. Detailed instructions on the FCC Form 2100, Schedule E provide additional information regarding Commission rules and policies. FCC Form 2100, Schedule E is presented primarily in a “Yes/No” certification format. However, it contains appropriate places for submitting explanations and exhibits where necessary or appropriate. Each certification constitutes a material representation. Applicants may only mark the “Yes” certification when they are certain that the response is correct. A “No” response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. FCC Form 2100, Schedule E filings made to implement post-auction channel changes will be considered minor change applications.

Class A applications for a major change are subject to third party disclosure requirement of Section 73.3580 which requires local public notice in a newspaper of general circulation of the filing of all applications for major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

47 CFR 74.793(d) requires that digital low power and TV translator stations shall be required to submit information as to vertical radiation patterns as part of their applications (FCC Forms 346 and 301–CA) for new or modified construction permits.

The Commission is submitting this revision to this information collection, which results from the rule provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (“Report

and Order”). This document approved channel sharing outside of the incentive auction context between full power, Class A, LPTV and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule E itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 CFR 73.6028 permits Class A stations to seek approval to share a single television channel with Low Power Television (LPTV), TV translator, full power and Class A television stations. Class A stations interested in terminating operations and sharing another station’s channel must submit FCC Form 2100 Schedule E in order to obtain Commission approval for their channel sharing arrangement.

*OMB Control Number:* 3060–1176.

*Title:* MVPD Notice, Section 73.3700.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved information collection.

*Respondents:* Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

*Number of Respondents and Responses:* 735 respondents; 735 responses.

*Estimated Hours per Response:* 1–2 hours.

*Frequency of Response:* One time reporting requirement; Third party disclosure requirement.

*Total Annual Burden:* 1,397 hours.

*Total Annual Cost:* \$43,800.

*Obligation To Respond:* Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

*Needs and Uses:* On June 2, 2014 the Commission released a rulemaking titled “Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,” GN Docket 12–268, Report and Order, FCC 14–50, 29 FCC Rcd 6567 (2014) which adopted rules for holding an Incentive Auction. Full power and Class A stations will be reassigned to a new channel via the repacking process following the auction. Other stations will submit winning bids to relinquish their channels, enter into channel sharing agreements (and move to the

channel of the station they are sharing with); or to move from high-VHF to low-VHF channels or from UHF to high-VHF or low-VHF. Each of these stations are required to notify multichannel video programming providers (“MVPD”) that carry the station of the fact that the station will be changing channels or terminating operations.

The information collection requirements contained in 47 CFR 73.3700 requires that full power and Class A television stations assigned a new channel in the incentive auction repacking, relinquishing their channel or moving to a new channel as a result of a winning bid in the auction, notify MVPDs of their termination of operations or change in channel.

On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (“Report and Order”). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations. Channel sharing stations also must notify MVPDs of the fact that stations will be terminating operations on one channel to share another station’s channel.

The information collection requirements contained in 47 CFR 73.3800, Full Power Television Channel Sharing Outside the Incentive Auction, Section 73.6028 Class A Television Channel Sharing Outside the Incentive Auction and Section 74.799 Low Power Television and TV Translator Channel Sharing require that stations seeking to channel share outside of the incentive auction provide notification to MVPDs of the fact that the station will be terminating operations on one channel to share another station’s channel.

*OMB Control No.:* 3060–1177.

*Title:* 47 CFR 74.800, Channel Sharing Agreement (CSA).

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

*Number of Respondents and Responses:* 160 respondents; 160 responses.

*Estimated Hours per Response:* 1 hr.

*Frequency of Response:* One time reporting requirement.

*Total Annual Burden:* 160 hours.

*Total Annual Cost:* \$86,400.

*Obligation to Respond:* Required to obtain benefits. The statutory authority

for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

*Needs and Uses:* Full power and Class A television stations that agree to share a single television channel in conjunction with the incentive auction and low power television (LPTV) and TV translator stations that channel share outside of the auction context are required to reduce their agreement (CSA) to writing and submit a copy to the Commission for review. There is no specified format for the CSA but it must contain provisions covering: a. Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities; b. Allocation of bandwidth within the shared channel; c. Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party’s financial obligations, and any relevant notice provisions; d. Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; e. Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA and f. A provision affirming compliance with the channel sharing requirements in the rules including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

The Commission is submitting this revision to this information collection, which results from the rule provisions adopted in the FCC 14–50 and FCC 17–29.

On June 2, 2014 the Commission released a rulemaking titled “Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,” GN Docket 12–268, Report and Order, FCC 14–50, 29 FCC Rcd 6567 (2014) which adopted rules for holding an Incentive Auction. Full power and Class A stations are permitted to propose to relinquish their channels in the auction and to share the channel of another station.

The information collection requirements contain in 47 CFR 73.3700 requires that full power and Class A television stations seeking approval to

channel share in the incentive auction provide the Commission with a copy of their CSA for review.

On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (“Report and Order”). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations.

The information collection requirements contained in 47 CFR 73.3800, Full Power Television Channel Sharing Outside the Incentive Auction, Section 73.6028, Class A Television Channel Sharing Outside the Incentive Auction and Section 73.799, Low Power Television and TV Translator Channel Sharing require that stations seeking to channel share outside of the incentive auction provide a copy of their “CSA” to the Commission for review.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2017–07472 Filed 4–12–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0370]

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the

information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before June 12, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele at (202) 418-2991.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060-0370.

*Title:* Part 32, Uniform System of Accounts for Telecommunications Companies.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents and Responses:* 852 respondents; 852 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 11, 151, 154, 161, 201-205, 215, and 218-220.

*Total Annual Burden:* 852 hours.

*Total Annual Cost:* No cost(s).

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission, in 2004, adopted the Joint Conference's recommendations to reinstate the following part 32 accounts: Account 5230, Directory revenue; Account 6621, Call completion services; Account 6622, Number services; Account 6623, customer services; Account 6561, Depreciation expense-telecommunications plant in service; Account 6562, Depreciation expense-property held for future telecommunications use; Account 6563, Amortization expense-tangible; Account 6564, Amortization expense-intangible; and Account 6565, Amortization expense-other. The Commission established a recordkeeping requirement that Class A ILECs maintain subsidiary record categories for unbundled network element revenues, resale revenues, reciprocal compensation revenues, and other interconnection revenues in the accounts in which these revenues are currently recorded. The use of subsidiary record categories allows carriers to use whatever mechanisms they choose, including those currently in place, to identify the relevant amounts as long as the information can be made available to state and federal regulators upon request. The use of subsidiary record categories for interconnection revenue does not require massive changes to the ILECs' accounting systems and is a far less burdensome alternative than the creation of new accounts and/or subaccounts. The information submitted

to the Commission by carriers provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2017-07473 Filed 4-12-17; 8:45 am]

**BILLING CODE 6712-01-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 April 26, 2017.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Larry G. Gerdes, Atlanta, Georgia, joining the Gerdes Control Group, consisting of Steven H. Gerdes, Houston, Texas, as a group acting in concert, to acquire voting shares of Citizens Bancshares, Inc., Walnut, Illinois and thereby acquire Citizens First State Bank, Walnut, Illinois.*

Board of Governors of the Federal Reserve System, April 7, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2017-07436 Filed 4-12-17; 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 May 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](mailto:Applications.Comments@atl.frb.org):

1. *Sunrise Bancshares, Inc.*, Cocoa Beach, Florida; to become a bank holding company by acquiring 100 percent of the outstanding voting shares of Sunrise Bank, both of Cocoa Beach, Florida.

Board of Governors of the Federal Reserve System, April 7, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2017-07435 Filed 4-12-17; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission (“FTC”).

**ACTION:** Notice and request for comment.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for information collection requirements contained in its Informal Dispute Settlement Procedures Rule.

That clearance expires on April 30, 2017.

**DATES:** Comments must be received by May 15, 2017.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write “Warranty Rules: Paperwork Comment, FTC File No. P044403” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/idsprpra2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information requirements should be addressed to Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., CC-8528, Washington, DC 20580, (202) 326-3711.

**SUPPLEMENTARY INFORMATION:**

*Title:* Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule), 16 CFR 703.

*OMB Control Number:* 3084-0113.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule) specifies the minimum standards which must be met by any informal dispute settlement mechanism (IDSM) that is incorporated into a written consumer product warranty and which the consumer must use before pursuing legal remedies under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act) in court. These minimum standards for IDSMs include requirements concerning the mechanism’s structure (*e.g.*, funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism’s procedures for resolving disputes (*e.g.*, notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that IDSMs establish written operating procedures and provide copies of those

procedures upon request. The Rule applies only to those firms that choose to be bound by it by requiring consumers to use an IDSM. A warrantor is free to set up an IDSM that does not comply with the Rule as long as the warranty does not contain a prior resort requirement.

On January 27, 2017, the Commission sought comment on the Rule’s information collection requirements. 82 FR 8614. No germane comments were received.<sup>1</sup> As required by OMB regulations, 5 CFR 1320, the FTC is providing this second opportunity for public comment.

*Likely Respondents:* Warrantors (Automobile Manufacturers) and Informal Dispute Settlement Mechanisms.

*Estimated Annual Hours Burden:* 7,841 hours (derived from (5,364 hours for recordkeeping + 1,788 hours for reporting + 689 hours for disclosures).

*Estimated Number of Respondents, Estimated Average Burden per Respondent:*

(a) Recordkeeping—IDSMs, 2, 30 minutes/case for 10,727 annual consumer cases;

(b) Reporting—IDSMs, 2, 10 minutes/case for 10,727 annual consumer cases; &

(c) Disclosures—Warrantors, 17, annual 30 hours each; IDSMs, 2, 5 minutes/case for 2,145 consumer cases.

*Frequency of Response:* Periodic.

*Total Annual Labor Cost:* \$159,265.

*Total Annual Capital or Other Non-Labor Cost:* \$312,759.

### Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 15, 2017. Write “Warranty Rules: Paperwork Comment, FTC File No. P044403” on your comment. Your comment, including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone’s Social Security number, date of birth, driver’s license number or other state

<sup>1</sup> The Commission received two non-germane comments.

identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you are required to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/idsprpra2>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that Web site.

If you file your comment on paper, write “Warranty Rules: Paperwork Comment, FTC File No. P044403” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as

appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 15, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5167.

**David C. Shonka,**

*Acting General Counsel.*

[FR Doc. 2017-07486 Filed 4-12-17; 8:45 am]

**BILLING CODE 6750-01-P**

## FEDERAL TRADE COMMISSION

### **Division of Consumer and Business Education; Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery**

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** 30-Day notice of submission of information collection approval from the Office of Management and Budget (“OMB”) and request for comments.

**SUMMARY:** As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the FTC is submitting a Generic Information Collection Request (Generic ICR): “Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery” to OMB for approval under the Paperwork Reduction Act.

**DATES:** Comments must be submitted May 15, 2017.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “FTC Generic Clearance ICR, Project No. P035201” on your comment, and file your comment online

at <https://ftcpublishcommentworks.com/ftc/genericclearance> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact Bridget Small at 202-326-3266.

#### **SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

*Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration’s commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate,

methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The FTC received one responsive comment<sup>1</sup> in reply to the 60-day notice published in the **Federal Register** on January 30, 2017 (82 FR 8755). The commenter pointed to several issues that may arise when conducting small group or focus group discussions. When it conducts these groups, the FTC works with experienced professional moderators who are familiar with, and prepared for, the potential hazards of small group dynamics. The FTC is aware that small group discussions don't necessarily reflect public opinion in general, but they can be illuminating and help us understand specific people's experiences and opinions. The FTC encourages these skilled moderators to engage group members and help it learn others' perspectives. That way, the FTC can adjust and improve service as needed.

Below are the FTC's projected average annual estimates for the next three years:

*Current Actions:* New collection of information.

*Type of Review:* New collection.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Average Expected Annual Number of Activities:* 39.

*Respondents:* 2,680.<sup>2</sup>

*Frequency of Response:* Once per request.

*Annual Responses:* 2,680.

*Average Minutes per Response:* 26 (rounded to nearest whole minute).

<sup>1</sup> Douglas Waterman, University of Idaho. <https://www.ftc.gov/policy/public-comments/initiative-694>.

<sup>2</sup> Projected activities: (1) Three customer satisfaction surveys per year of 500 respondents each and one customer satisfaction survey per year of 800 respondents each (surveys to get feedback about major campaigns, publications, Web sites, branding and other consumer and business education products to test their appeal and effectiveness), .25 hours (*i.e.* 15 minutes) per response; (2) Twenty focus groups per year, 10 respondents each (to test education products and Web sites), 2 hours per response; and (3) Fifteen usability sessions per year, 12 respondents per Web site (to test the usability of FTC Web sites by inviting people to complete common tasks on those sites), 1 hour per response. These estimates reflect an increase from those the FTC published in the associated prior **Federal Register** Notice of January 30, 2017. The current projected estimates more accurately reflect the FTC's assessment of potential needs to reach audiences in different ways.

*Burden Hours:* 1,155.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The control number for the existing clearance (expiring April 30, 2017) is 3084-0159. The FTC seeks renewed three-year clearance under this control number for the prospective collection of information and the associated burden estimates.

#### Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before May 15, 2017. Write "FTC Generic Clearance ICR, Project No. P035201" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <https://www.ftc.gov/policy/public-comments>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/genericclearancepra2> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#/home>, you also may file a comment through that Web site.

If you file your comment on paper, write "FTC Generic Clearance ICR, Project No. P035201" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Comments on any proposed information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be

addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5806.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be placed on the public record—including the publicly accessible FTC Web site at [www.ftc.gov](http://www.ftc.gov)—to the extent practicable. Any information that you place in the following fields on this form—"Title," "First Name," "Last Name," "Organization Name," "State," "Postal Code," "Country," "Comments," and "Attachment"—will be publicly available on the FTC Web site. Although filling out this comment form is voluntary, the fields marked with an asterisk are required in order for the FTC to fully consider your comment. Because your comment will be placed on the publicly accessible FTC Web site at [www.ftc.gov](http://www.ftc.gov), you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Once your comment has been posted on the public FTC Web site—as legally

required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request in accordance with the law and the public interest. Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including other routine uses of comments permitted by the Privacy Act, may be found at <https://www.ftc.gov/site-information/privacy-policy>.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2017-07485 Filed 4-12-17; 8:45 am]

BILLING CODE 6750-01-P

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[30Day-17-17IV]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies 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; (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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

#### Proposed Project

##### APPLETREE Performance Measures—New—Agency for Toxic Substances and Disease Registry (ATSDR)

##### Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) serves the public through responsive public health actions to promote healthy and safe environments and to prevent harmful exposures in communities across the nation. ATSDR's Partnership to Promote Local Efforts to Reduce Environmental Exposure (APPLETREE) Program is critical to ATSDR's success in this mission. The purpose of the program is to: (1) Identify pathways of exposure to hazardous substances at hazardous waste sites and releases; (2) identify, implement, and coordinate public health interventions to reduce exposures to hazardous substances which occur at levels of health concern; and (3) provide training at the state level to promote and achieve the safe siting of child care facilities in the United States. The APPLETREE Program is also a mechanism which enhances ATSDR's communication with state, local, and federal health and environmental agencies. This program is authorized under sections 104(i)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i)(15)].

Under the new three-year APPLETREE cooperative agreement

(Funding Opportunity Announcement No. CDC-RFA-TS17-1701), eligible applicants include federally recognized American Indian/Alaska Native tribal governments; American Indian/Alaska native tribally designated organizations; political subdivisions of states (in consultation with states); and state and local governments or their bona fide agents. ATSDR technical project officers (TPOs) will assist approximately 25 APPLETREE awardees to address site-specific issues involving human exposure to hazardous substances. Key capacities include identification of human exposure pathways at ATSDR sites, education of affected communities and local health professionals about site contamination and potential health effects; making appropriate recommendations to prevent exposure; reviewing health outcome data to evaluate potential links between site contaminants and community health; and documenting the effects of environmental remediation on health.

ATSDR will collect information related to awardee activities, and the process and outcome performance measures outlined by the cooperative agreement program. Information will be used to monitor progress toward program goals and objectives, and for program quality improvement.

*ATSDR Health Education Activity Tracking (HEAT) Form:* For each environmental health assessment and health education activity conducted at ATSDR sites, APPLETREE awardees must quantitatively assess and report efforts to educate community members about site recommendations and health risks using indicators to assess community understanding of site findings about health risks and community understanding of agency recommendations to reduce health risks. This information will be entered in the ATSDR HEAT system for each activity at ATSDR sites. Based on past experience, ATSDR assumes a maximum of 925 activities will be entered into the HEAT database each year; therefore, each of the 25 awardees will enter an average of 37 activities into the HEAT database.

*ATSDR Technical Assistance (TA) Activity Form:* Throughout the budget year, this form is used to record the routine requests made of the awardees and their program responses. These responses do not evaluate environmental data and do not make health calls. They are not reviewed and cleared through ATSDR clearance processes but are monitored by ATSDR as part of the awardees' performance. ATSDR anticipates each awardee will

report an average of 15 TA requests per year.

**ATSDR Site Impact Assessment (SIA) Form:** For each environmental health assessment and health education activity conducted at ATSDR sites, awardees must estimate and report the number of people protected from exposure to toxic substances at each site where implementation of agency recommendations has taken place and at each child care center where safe siting guidelines have been implemented. To the extent possible, awardees must estimate the disease burden prevented due to the implementation of site recommendations and safe siting guidelines. This information will be entered into the ATSDR SIA database by the awardee. ATSDR assumes a

maximum of 150 ATSDR sites will undergo an environmental assessment, or an average of six sites per awardee, per year.

**APPLETREE Annual Performance Report (APR):** At the end of each budget year, awardees must provide an APR, including an updated Annual Plan of Work (APOW) for the next budget year. The report must include a synopsis of the number of people involved in environmental health assessments at sites, the number of public health recommendations accepted, the number of health education activities conducted at sites; and the outcomes achieved during the budget year. The APR must also demonstrate annual progress in implementing child care safe siting policies in their jurisdictions over the

three-year program period. ATSDR assumes that APRs will take three burden hours for each awardee to prepare.

**ATSDR Success Story Form:** By the end of the budget year, each awardee must also submit a minimum of three success stories to highlight the programs' annual accomplishments. ATSDR estimates that awardees will submit an average of four success stories which will take one hour each to prepare.

ATSDR seeks a three-year information collection clearance. Awardee reporting is a mandatory requirement of the APPLETREE cooperative agreement. The total annual time burden requested is 272 hours.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
APPLETREE Awardees .....	ATSDR Health Education Activity Tracking (HEAT) Form ....	25	37	3/60
	Technical Assistance (TA) Activity Form .....	25	15	5/60
	ATSDR Site Impact Assessment (SIA) Form .....	25	6	7/60
	APPLETREE Annual Performance Report (APR) .....	25	1	3
	Success Story Form .....	25	4	1

**Leroy A. Richardson,**  
*Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.*

[FR Doc. 2017-07483 Filed 4-12-17; 8:45 am]

**BILLING CODE 4163-70-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Decision To Evaluate a Petition To Designate a Class of Employees From the Idaho National Laboratory—Idaho Chemical Processing Plant in Scoville, Idaho, To Be Included in the Special Exposure Cohort**

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** NIOSH gives notice of a decision to evaluate a petition to designate a class of employees from the Idaho National Laboratory—Idaho Chemical Processing Plant in Scoville, Idaho, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.

**FOR FURTHER INFORMATION CONTACT:**  
 Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C-46, Cincinnati, OH 45226-1938, Telephone 877-222-7570. Information requests can also be submitted by email to [DCAS@CDC.GOV](mailto:DCAS@CDC.GOV).

**SUPPLEMENTARY INFORMATION:**

**Authority:** 42 CFR 83.9-83.12.

Pursuant to 42 CFR 83.12, the initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

**Facility:** Idaho National Laboratory—Idaho Chemical Processing Plant.

**Location:** Scoville, Idaho.

**Job Titles and/or Job Duties:** “All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Idaho National Laboratory (INL) in Scoville, Idaho and who were monitored for external radiation at the Idaho Chemical Processing Plant (CPP) with at least one film badge or thermoluminescent dosimeter from CPP between January 1, 1975 and December 31, 1980 for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with

work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.”

**Period of Employment:** January 1, 1975 through December 31, 1980.

**John Howard,**  
*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2017-07474 Filed 4-12-17; 8:45 am]

**BILLING CODE 4163-19-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60 Day-17-1035; Docket No. CDC-2017-0022]

**Proposed Data Collection Submitted for Public Comment and Recommendations**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the

general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed information collection project entitled “Assessing School-Centered HIV/STD Prevention Efforts in a Local Education Agency.” This study provides in-depth assessment of Human Immunodeficiency Virus (HIV) and Sexually Transmitted Disease (STD) prevention efforts in a location education agency funded by CDC’s Division of Adolescent and School Health.

**DATES:** Written comments will be received on or before June 12, 2017.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2017–0022 by any of the following methods:

- *Federal eRulemaking Portal:* *Regulations.gov.* Follow the instructions for submitting comments.

- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

**Please note:** All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of

information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

#### Proposed Project

Assessing School-centered HIV/STD Prevention Efforts in a Local Education Agency (OMB Control No. 0920–0135; Expiration 11/30/2017)—Revision—Division of Adolescent and School Health (DASH), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

HIV infections remain high among young men who have sex with men. The estimated number of new HIV infections increased between 2008 and 2010 both overall and among MSM ages 13 to 24. Furthermore, sexual risk behaviors associated with HIV, other STD, and pregnancy often emerge in adolescence. For example, 2015 Youth Risk Behavior Surveillance System (YRBSS) data revealed 41.2% of U.S. high school students reported having had sex, and

among those who had sex in the previous three months, only 56.9% reported having used a condom during last sexual intercourse. In addition, 2015 YRBSS data revealed high school students identifying as gay, lesbian, and bisexual and those reporting sexual contact with both males and females were more likely to engage in sexual risk-taking behaviors than heterosexual students.

Given the disproportionate risk for HIV among YMSM ages 13–24, it is important to find ways to reach the younger youth (*i.e.*, ages 13–19) in this range to decrease sexual risk behaviors and increase health-promoting behaviors such as routine HIV testing. Schools provide one opportunity for this. Because schools enroll more than 22 million teens (ages 14–19) and often have existing health and social services infrastructure, schools and their staff members are well-positioned to connect youth to a wide range of needed services, including housing assistance, support groups, and sexual health services such as HIV testing. As a result, CDC’s Division of Adolescent and School Health (DASH) has focused a number of HIV and STD prevention efforts on strategies that can be implemented in or centered on schools.

The CDC requests a one-year approval to conduct a revised information collection entitled, “Assessing School-Centered HIV/STD Prevention Efforts in a Local Education Agency” (OMB Control Number 0920–1035). This revised information collection request covers the third in a series of three data collections; the previous two were covered under the previously approved information collection.

The information collection uses a self-administered paper-pencil questionnaire, the Youth Health and School Climate Questionnaire, to assess HIV and STD prevention efforts in one local education agency (LEA) funded by the CDC, Division of Adolescent and School Health (DASH) under strategy 4 (School-Centered HIV/STD Prevention for Young Men Who Have Sex with Men) of PS13–1308: *Promoting Adolescent Health through School-Based HIV/STD Prevention and School-Based Surveillance*.

This data collection will provide data and reports for the funded LEA, and will allow the LEA to identify program areas that are working well and other areas that need improvement. In addition, the findings will allow CDC to determine the potential impact of currently recommended strategies and make changes to those recommendations if necessary. The questionnaire will include questions on

the following topics: demographic information; HIV and STD risk behaviors; use of HIV and STD health services; experiences at school, including school connectedness, harassment and bullying, homophobia, support of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) students; sexual orientation; receipt of referral for HIV and STD prevention health services; and health education.

This data collection system involves administration of a paper-and-pencil questionnaire to seven high schools that are participating in the HIV/STD prevention project of a local education agency that is funded with support from CDC's PS13-1308 cooperative agreement. The questionnaire, the Youth Health and School Climate Questionnaire, will be administered to approximately 16,500 students across the seven schools in the 2017-2018

school year. This is the third and final data collection of a four-year project that includes three data collections; previous data collections occurred in December 2014 and December 2016. Data collection points coincide with the approximate beginning, mid-way, and end points of the PS13-1308 cooperative agreement. We anticipate the final data collection will yield data from up to 16,500 high school students in grades 9 through 12 at the selected schools. Although some students may have completed the questionnaire in one or more of the previous years, this is not a longitudinal design and individual student responses will not be tracked across the years. No personally identifiable information will be collected.

All students' parents will receive parental consent forms that provide them with an opportunity to opt their

children out of the study. In addition, each student will be read verbal assent language that explains he or she may choose not to take the questionnaire or may skip any questions in the questionnaire with no penalty. Participation is completely voluntary.

The estimated burden per response ranges from 35-45 minutes. This variation in burden is due to the slight variability in skip patterns that may occur with certain responses and variations in the reading speed of students. The burden estimate presented here is based on the assumption of a 40-minute response time per response. Students will complete the questionnaire only once under this approval. Annualizing the collection over one year results in an estimated annualized burden of 11,000 hours for respondents. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Students in grades 9-12 .....	Youth Health and School Climate Questionnaire.	16,500	1	40/60	11,000
Total .....	.....	.....	.....	.....	11,000

**Leroy A. Richardson,**  
 Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.

[FR Doc. 2017-07482 Filed 4-12-17; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2016-N-4389]

**Genome Editing in New Plant Varieties Used for Foods; Extension of Comment Period**

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

**ACTION:** Notification; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA or we) is extending the comment period for a docket to receive information and comments on the use of genome editing techniques to produce new plant varieties that are used for human or animal food. We established the docket

through a notice that appeared in the **Federal Register** of January 19, 2017. We are taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

**DATES:** We are extending the comment period on the notice that published January 19, 2017 (82 FR 6564). Submit either electronic or written comments by June 19, 2017. Late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of June 19, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to [https://](https://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA 2016–N–4389 for “Genome Editing in New Plant Varieties Used for Foods.” Received comments, those filed in a timely manner (see **DATES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

**FOR FURTHER INFORMATION CONTACT:**

*Regarding human food issues:* Jason Dietz, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2282.

*Regarding animal food issues:* Kathleen Jones, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5938.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 19, 2017, we published a notice announcing the establishment of a docket to receive comments on the use of genome editing techniques to produce new plant varieties that are used for human or animal food. We requested these comments because we recognize that developers of new plant varieties, researchers, and other stakeholders may have valuable factual information and data about foods derived from new plant varieties produced using genome editing, which can help inform FDA’s thinking for these specific products. The notice also discussed the history of FDA’s thinking regarding these products, our long history of consultations with developers, researchers, and other stakeholders, and specific questions and issues for which we invited comments. We provided a 90-day comment period that was scheduled to end on April 19, 2017.

We have received requests for a 60-day extension of the comment period. The requests conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful comments to the questions and issues we presented in the notice.

We have considered the requests and are extending the comment period for 60 days, until June 19, 2017. A 60-day extension allows more time for interested persons to submit comments to the docket on this issue.

Dated: April 7, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017–07469 Filed 4–12–17; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2017–N–1610]

**Medical Devices; Exemptions From Premarket Notification: Class I Devices**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has identified a list of class I devices that are now exempt from premarket notification requirements, subject to certain limitations. FDA is publishing this notice of that determination in accordance with procedures established by the 21st Century Cures Act. This notice represents FDA’s final determination with respect to the class I devices included in this document. FDA’s action will decrease regulatory burdens on the medical device industry and will eliminate private costs and expenditures required to comply with certain Federal regulation.

**FOR FURTHER INFORMATION CONTACT:** Bryce Bennett, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5244, Silver Spring, MD 20993, 301–348–1446, email: [Gregory.Bennett@fda.hhs.gov](mailto:Gregory.Bennett@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (1976 amendments) (Pub. L. 94–295), and the Safe Medical Devices Act of 1990 (Pub. L. 101–629), devices are classified into class I (general controls) if there is information showing that the general controls of the FD&C Act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life sustaining or life supporting device, or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section

513(c) and (d) of the FD&C Act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the FD&C Act (21 U.S.C. 360(k)). Section 510(k) of the FD&C Act and the implementing regulations, part 807 of Title 21 of the Code of Federal Regulations (CFR), require persons who intend to market a new device to submit a premarket notification (510(k)) containing information that allows FDA to determine whether the new device is “substantially equivalent” within the meaning of section 513(i) of the FD&C Act to a legally marketed device that does not require premarket approval.

The 21st Century Cures Act (Pub. L. 114–255) was signed into law on December 13, 2016. Section 3054 of that Act amended section 510(l) of the FD&C Act. As amended, section 510(l)(2) of the FD&C Act requires FDA to identify through publication in the **Federal Register**, any type of class I device that the Agency determines no longer requires a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. FDA is required to publish this determination within 120 days of the date of enactment of the 21st Century Cures Act and at least once every 5 years thereafter, as FDA determines appropriate. Section 510(l)(2) further provides that upon the date of publication of the Agency’s determination in the **Federal Register**, a 510(k) will no longer be required for these devices and the classification regulation applicable to each such type of device shall be deemed amended to incorporate such exemption. In a final action, FDA intends to amend the codified language for each listed classification regulation to reflect the final determination with respect to 510(k) exemption. FDA’s action will

decrease regulatory burdens on the medical device industry and will eliminate private costs and expenditures required to comply with certain Federal regulation. Specifically, regulated industry will no longer have to invest time and resources in 510(k) submissions for certain class I devices, including preparation of documents and data for submission to FDA, payment of user fees associated with 510(k) submissions, and responding to questions and requests for additional information from FDA during 510(k) review.

**II. Criteria for Exemption**

As stated previously, section 3054 of the 21st Century Cures Act amended section 510(l) of the FD&C Act. In doing so, the amendments reorganized section 510(l) into subsections 510(l)(1) and (2). As such, subsection 510(l)(1) provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the FD&C Act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury (hereafter “reserved criteria”). Based on these reserved criteria, FDA has evaluated all class I devices to determine which device types should be exempt from premarket notification requirements. In developing the list of exempt devices, the Agency considered its experience in reviewing premarket notifications for these devices, focusing on the risk inherent with the device and the disease being treated or diagnosed (e.g., devices with rapidly evolving technology or expansions of intended uses). The Agency also considered the history of adverse event reports under the medical device reporting program for these devices, as well as their history of product recalls. Following these considerations, FDA reached the final determination that the devices listed in table 1 do not meet the reserved criteria in that they are not intended for a use

that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury.

**III. Limitations on Exemptions**

FDA believes that the types of class I devices listed in this notice should be exempt from the premarket notification requirements found under section 510(k) of the FD&C Act. However, an exemption from the requirement of premarket notification does not mean that the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation. FDA’s determination that premarket notification is unnecessary to provide a reasonable assurance of safety and effectiveness for devices listed in this document is based, in part, on the assurance of safety and effectiveness that other regulatory controls, such as current good manufacturing practice requirements, provide.

In addition to being subject to the general limitations to the exemptions found in 21 CFR 862.9, 864.9, 866.9, 872.9, 876.9, 878.9, 880.9, 882.9, 884.9 and 886.9, FDA may also partially limit the exemption from premarket notification requirements to specific devices within a listed device type. In table 1, for example, FDA lists the exemption of the ataxiagraph device as 510(k) exempt, but limits the exemption to such devices that do not provide an interpretation or a clinical implication of the measurement. All other ataxiagraph devices are still subject to premarket notification requirements because FDA determined that premarket notification is necessary to provide a reasonable assurance of safety and effectiveness for these devices.

**IV. List of Class I Devices**

FDA is identifying the following list of class I devices that no longer require premarket notification under section 510(k) of the FD&C Act, subject to the general limitations to the exemptions:

TABLE 1—CLASS I DEVICES

21 CFR section	Device type	Product code	Partial exemption limitation (if applicable)
862.1410 .....	Bathophenanthroline, Colorimetry, Iron (Non-Heme) .....	CFM	
862.1410 .....	Photometric Method, Iron (Non-Heme) .....	JIY	
862.1410 .....	Atomic Absorption, Iron (Non-Heme) .....	JIZ	
862.1410 .....	Radio-Labeled Iron Method, Iron (Non-Heme) .....	JJA	
862.1415 .....	Ferrozine (Colorimetric) Iron Binding Capacity .....	JMO	
862.1415 .....	Resin, Ion-Exchange, Thioglycolic Acid, Colorimetry, Iron Binding Capacity.	JQD	
862.1415 .....	Resin, Ion-Exchange, Ascorbic Acid, Colorimetry, Iron Binding Capacity.	JQE	
862.1415 .....	Bathophenanthroline, Iron Binding Capacity .....	JQF	
862.1415 .....	Radiometric, Fe59, Iron Binding Capacity .....	JQG	

TABLE 1—CLASS I DEVICES—Continued

21 CFR section	Device type	Product code	Partial exemption limitation (if applicable)
862.1580 .....	Phosphomolybdate (Colorimetric), Inorganic Phosphorus	CEO	
862.1660 .....	Electrolyte Controls (Assayed and Unassayed) .....	JJR	
862.1660 .....	Controls For Blood-Gases, (Assayed and Unassayed) ...	JJS	
862.1660 .....	Enzyme Controls (Assayed and Unassayed) .....	JJT	
862.1660 .....	Urinalysis Controls (Assayed and Unassayed) .....	JJW	
862.1660 .....	Single (Specified) Analyte Controls (Assayed and Unassayed).	JJX	Exemption is limited to controls not intended for use in donor screening tests.
862.1660 .....	Multi-Analyte Controls, All Kinds (Assayed) .....	JJY	Exemption is limited to controls not intended for use in donor screening tests.
862.1660 .....	Tonometer (Calibration and Q.C. of Blood-Gas Instruments), Clinical.	LCH	
862.1660 .....	Kit, Serological, Positive Control .....	MJX	Exemption is limited to controls not intended for use in donor screening tests.
862.1660 .....	Kit, Serological, Negative Control .....	MJY	Exemption is limited to controls not intended for use in donor screening tests.
862.1660 .....	Kit, Direct Antigen, Positive Control .....	MJZ	Exemption is limited to controls not intended for use in donor screening tests.
862.1660 .....	Kit, Direct Antigen, Negative Control .....	MKA	Exemption is limited to controls not intended for use in donor screening tests.
862.1775 .....	Acid, Uric, Phosphotungstate Reduction .....	CDH	
862.1775 .....	Acid, Uric, Uricase (U.V.) .....	CDO	
862.1775 .....	Acid, Uric, Uricase (Gasometric) .....	JHA	
862.1775 .....	Acid, Uric, Uricase (Oxygen Rate) .....	JHC	
862.1775 .....	Acid, Uric, Acid Reduction of Ferric Ion .....	LFQ	
862.3050 .....	Devices, Breath Trapping, Alcohol .....	DJZ	
862.3220 .....	Spectral Absorb. Curve, Oxyhemoglobin, Carboxyhemoglobin, Carbon-Monoxide.	JKS	
862.3220 .....	Gas Chromatograph, Carbon-Monoxide .....	JKT	
862.3220 .....	Enzyme Immunoassay, Nicotine and Nicotine Metabolites.	MKU	
862.3240 .....	Cholinesterase Test Paper .....	DIG	
862.3240 .....	Colorimetry, Cholinesterase .....	DIH	
862.3240 .....	Acetylcholine Chloride, Specific Reagent for Pseudo Cholinesterase.	DLI	
862.3240 .....	Solution, M-Nitrophenol, Specific Reagent for Cholinesterase.	DMR	
862.3240 .....	Electrometry, Cholinesterase .....	DOH	
862.3280 .....	Heavy Metals Control Materials .....	DIE	
862.3280 .....	Drug Mixture Control Materials .....	DIF	
862.3280 .....	Digitoxin Control Serum, Ria .....	DJK	
862.3280 .....	Alcohol Control Materials .....	DKC	
862.3280 .....	Digoxin Control Serum, Ria .....	DMP	
862.3280 .....	Drug Specific Control Materials .....	LAS	
862.3280 .....	Theophylline Control Materials .....	LAW	
862.3280 .....	Lidocaine Control Materials .....	LAX	
862.3280 .....	Methotrexate Control Materials .....	LAY	
862.3280 .....	N-Acetylprocainamide Control Materials .....	LAZ	
862.3280 .....	Procainamide Control Materials .....	LBA	
864.7040 .....	ATP Release (Luminescence) .....	JWR	
864.7040 .....	Adenine Nucleotide Quantitation .....	KHF	
866.2900 .....	Device, Parasite Concentration .....	LKS	
872.4565 .....	Parallelometer .....	EGI	
872.4565 .....	Syringe, Irrigating (Dental) .....	EIB	
876.5160 .....	External Urethral Occluder, Urinary Incontinence-Control, Female.	MNG	
878.4014 .....	Kit, First Aid, Talking .....	OVR	
880.5680 .....	Pediatric Position Holder .....	PRN	
880.6250 .....	Finger Cot .....	LZB	
880.6320 .....	Device, Medical Examination, AC Powered .....	KZF	
880.6320 .....	Accessories to Examination Light .....	PEQ	
880.6375 .....	Lubricant, Patient .....	KMJ	
880.6760 .....	Restraint, Patient, Conductive .....	BRT	
880.6760 .....	Restraint, Protective .....	FMQ	
880.6760 .....	Patient Bed with Canopy/Restraints .....	OYS	
882.1030 .....	Ataxiagraph .....	GWW	Exemption is limited to ataxiagraph devices not intended to provide an interpretation or a clinical implication of the measurement.
882.4060 .....	Cannula, Ventricular .....	HCD	
882.4545 .....	Instrument, Shunt System Implantation .....	GYK	
884.5435 .....	Pad, Menstrual, Reusable .....	NUQ	
884.5435 .....	Pad, Interlabial .....	NUR	

TABLE 1—CLASS I DEVICES—Continued

21 CFR section	Device type	Product code	Partial exemption limitation (if applicable)
886.4070 .....	Engine, Trephine, Accessories, Gas-powered .....	HLD	
886.4070 .....	Burr, Corneal, Battery-powered .....	HOG	
886.4070 .....	Engine, Trephine, Accessories, Battery-powered .....	HRF	
886.4070 .....	Engine, Trephine, Accessories, AC-powered .....	HRG	
886.4070 .....	Burr, Corneal, AC-powered .....	HQS	

Dated: April 7, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-07468 Filed 4-12-17; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2008-D-0394]

**Regulation of Intentionally Altered Genomic DNA in Animals; Extension of Comment Period**

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

**ACTION:** Notice of availability; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA or we) is extending the comment period for the draft guidance for industry (GFI) #187 entitled “Regulation of Intentionally Altered Genomic DNA in Animals” that was announced in the **Federal Register** of January 19, 2017. We are taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

**DATES:** We are extending the comment period on the draft guidance published January 19, 2017 (82 FR 6561). Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on this draft guidance, submit either electronic or written comments on the draft guidance by June 19, 2017.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA-2008-D-0394 for “Regulation of Intentionally Altered Genomic DNA in Animals.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

“THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

**FOR FURTHER INFORMATION CONTACT:** Laura R. Epstein, Center for Veterinary Medicine (HFV-1), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301-796-8558, [laura.epstein@fda.hhs.gov](mailto:laura.epstein@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 19, 2017, FDA published a notice announcing the availability of draft GFI #187 entitled “Regulation of Intentionally Altered Genomic DNA in Animals” with a 90-day comment period. We requested comments on expanding the scope of the guidance to address animals intentionally altered through use of genome editing techniques, nomenclature, and on whether certain

types of genome editing may pose minimal risk.

We have received several requests for a 60-day extension of the comment period for the draft guidance and the questions we posted in the notice announcing the availability of the guidance. Each request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the draft guidance and the questions in the notice.

We have considered the requests and are extending the comment period for the draft guidance for 60 days, until June 19, 2017. A 60-day extension allows more time for interested persons to submit comments, including comments on all aspects of the draft guidance.

Dated: April 7, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-07470 Filed 4-12-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council.

*Date:* May 10, 2017.

*Open:* 8:30 a.m. to 12:00 p.m.

*Agenda:* To present the Director's Report and other scientific presentations.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 4:15 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7323, MSC 5452 Bethesda, MD 20892, (301) 594-8843, [stanfibr@nidk.nih.gov](mailto:stanfibr@nidk.nih.gov).

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

*Date:* May 10, 2017.

*Open:* 1:00 p.m. to 2:30 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Center, Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Center, Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7323, MSC 5452, Bethesda, MD 20892, (301) 594-8843, [stanfibr@nidk.nih.gov](mailto:stanfibr@nidk.nih.gov).

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

*Date:* May 10, 2017.

*Open:* 1:00 p.m. to 2:15 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Center, Room 7, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Center, Room 7, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7323, MSC 5452, Bethesda, MD 20892, (301) 594-8843, [stanfibr@nidk.nih.gov](mailto:stanfibr@nidk.nih.gov).

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

*Date:* May 10, 2017.

*Closed:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Center, Room 10, 31 Center Drive, Bethesda, MD 20892.

*Open:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Center, Room 10, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7323, MSC 5452, Bethesda, MD 20892, (301) 594-8843, [stanfibr@nidk.nih.gov](mailto:stanfibr@nidk.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: [www.nidk.nih.gov/fund/divisions/DEA/Council/coundesc.htm](http://www.nidk.nih.gov/fund/divisions/DEA/Council/coundesc.htm), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 10, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-07509 Filed 4-12-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Drug Abuse.

*Date:* May 2, 2017.

*Closed:* 9:00 a.m. to 10:30 a.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Open:* 10:45 a.m. to 5:00 p.m.

*Agenda:* This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, NSC, Room 5274, MSC 9591, Rockville, MD 20892, 301-443-6487, [sweiss@nida.nih.gov](mailto:sweiss@nida.nih.gov).

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page:

[www.drugabuse.gov/NACDA/NACDAHome.html](http://www.drugabuse.gov/NACDA/NACDAHome.html), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 10, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-07507 Filed 4-12-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Silencing of HIV-1 Proviruses (R61/R33).

*Date:* May 8-9, 2017.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5601 Fishers Lane, 4H200A/B, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Chelsea D. Boyd, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC-9823, Rockville, MD 20852-9834, 240-669-2081, [chelsea.boyd@nih.gov](mailto:chelsea.boyd@nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Clinical Trial Implementation Cooperative Agreement (U01).

*Date:* May 8, 2017.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Jay R Radke, Ph.D., AIDS Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G11B, National Institutes of Health, NIAID, 5601 Fishers Lane MSC-9823, Bethesda, MD 20892-9823, (240) 669-5046, [jay.radke@nih.gov](mailto:jay.radke@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 10, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-07506 Filed 4-12-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, SBIR PHASE II—Development & Manufacturing of Pharmaceutical Products for Addiction Treatment (1210, 1211, 1212, 1213).

*Date:* May 23, 2017.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892-9550, (301) 827-5702, [lf33c.nih.gov](mailto:lf33c.nih.gov).

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 10, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-07508 Filed 4-12-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Loan Repayment Application Review.

*Date:* April 27, 2017.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* John F. Connaughton, Ph.D., Chief, Scientific Review Branch, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7797, [connaughtonj@extra.niddk.nih.gov](mailto:connaughtonj@extra.niddk.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Policy and Program Evaluation.

*Date:* April 28, 2017.

*Time:* 2:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health,

Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892-2542, (301) 594-8898, [barnardm@extra.niddk.nih.gov](mailto:barnardm@extra.niddk.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 10, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-07510 Filed 4-12-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Office of the Director; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portion of the meeting devoted to the identification and evaluation of specific candidates for consideration for leadership positions in the Clinical Center will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B) and 552b(c)(6), Title 5 U.S.C., as amended. Premature disclosure of potential candidates and their qualifications, as well as the discussions by the committee, could significantly frustrate NIH's ability to recruit these individuals and the consideration of personnel qualifications, performance, and the competence of individuals as candidates would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* NIH Clinical Center Research Hospital Board.

*Date:* April 28, 2017.

*Open:* 8:30 a.m. to 3:20 p.m.

*Agenda:* Clinical Center Tour (8:30-9:45) Welcome and Board Chair's Overview; NIH Director's Remarks, NIH CC CEO: First 100

Days; CCRHB-Clinical Center Governing Board Joint Session; Delayed Reporting Root Cause Analysis; Clinical Trials Support Realignment.

*Place:* Conference Room 6C6 (except for Clinical Center Tour), Building 31, National Institutes of Health, Bethesda, MD 20892.

*Closed:* 3:20 p.m. to 5:00 p.m.

*Agenda:* Identification of Candidates for Leadership Roles.

*Place:* Conference Room 6C6, Building 31, National Institutes of Health, Bethesda, MD 20892.

*Contact Person:* Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301-496-4272, [woodgs@od.nih.gov](mailto:woodgs@od.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: April 7, 2017.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-07427 Filed 4-12-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Office of the Director, Office of Science Policy; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the National Science Advisory Board for Biosecurity (NSABB).

*Name of Committee:* National Science Advisory Board for Biosecurity.

*Date:* May 11, 2017.

*Time:* 2:00 p.m.-4:30 p.m. Eastern.

*Agenda:* Presentations and discussions regarding: (1) The Blue Ribbon Panel draft report on the 2014 variola virus incident on the NIH Bethesda campus; (2) stakeholder engagement on implementation of the U.S. Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (DURC); and (3) other business of the Board.

*Place:* Telephone conference call only (no in-person meeting), Public Dial-in (US Toll Free): 1-866-939-3921, Confirmation Number: 44675525.

*Contact Person:* Jessica Tucker, Ph.D., Executive Director, NSABB, NIH Office of Science Policy, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 451-4431, [jessica.tucker@nih.gov](mailto:jessica.tucker@nih.gov).

Under authority 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the National Science Advisory Board for Biosecurity (NSABB) to provide advice regarding federal oversight of dual use research—defined as legitimate biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security.

The toll-free teleconference line will be open to the public at 1:30 p.m. to allow time for operator-assisted check-in. Members of the public planning to participate in the teleconference may also pre-register online via the link provided below or by calling Palladian Partners, Inc. (Contact: Carly Sullivan at 301-318-0841). Pre-registration will close at 12:00 p.m. Eastern on May 8, 2017. After that time, attendees may register their information with the teleconference operator upon dialing into the meeting. Individuals who plan to participate and need special assistance should submit a request to the contact person listed on this notice by May 3, 2017.

*Meeting materials:* The meeting agenda, background material, and online pre-registration will be available at: <https://palladianpartners.cvent.com/nsabbmay2017>. Please check this Web site for updates.

*Public Comments:* Time will be allotted on the agenda for the delivery of oral public comments. Members of the public interested in delivering prepared comments relevant to the mission of the NSABB should indicate so upon registration. Sign-up for delivering prepared oral comments will be limited to one per person or organization representative per open comment period. Individual comments will be time-limited to facilitate broad participation from multiple speakers.

In addition, interested persons may file written comments at any time with the Board via an email sent to [nsabb@od.nih.gov](mailto:nsabb@od.nih.gov) or by regular mail sent to the Contact Person listed on this notice. Written statements should include the name, contact information, and when applicable, the professional affiliation of the interested person. Written comments received by 12:00 p.m. Eastern on May 8, 2017 will be relayed

to the NSABB prior to the teleconference meeting. Any written comments received after this deadline will be provided to the Board either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable federal policies.

Dated: April 10, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-07511 Filed 4-12-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4304-DR; Docket ID FEMA-2017-0001]

### Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA-4304-DR), dated February 24, 2017, and related determinations.

**DATES:** Effective March 23, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 24, 2017.

Rice and Russell Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Robert J. Fenton,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-07430 Filed 4-12-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4305-DR; Docket ID FEMA-2017-0001]

### California; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA-4305-DR), dated March 16, 2017, and related determinations.

**DATES:** Effective March 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated March 16, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of California resulting from severe winter storms, flooding, and mudslides during the period of January 18–23, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75

percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy J. Scranton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

El Dorado, Kern, Los Angeles, Mendocino, Napa, Orange, Riverside, Sacramento, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Trinity, Tuolumne, and Yolo Counties for Public Assistance.

All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Robert J. Fenton,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-07429 Filed 4-12-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3375-EM; Docket ID FEMA-2017-0001]

#### Michigan; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Michigan (FEMA-3375-EM), dated January 16, 2016, and related determinations.

**DATES:** *Effective Date:* August 14, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective August 14, 2016.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**Robert J. Fenton,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-07433 Filed 4-12-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4307-DR; Docket ID FEMA-2017-0001]

#### Nevada; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Nevada (FEMA-4307-DR), dated March 27, 2017, and related determinations.

**DATES:** Effective March 27, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated

March 27, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Nevada resulting from severe winter storms, flooding, and mudslides during the period of February 5–22, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Nevada.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Rosalyn L. Cole, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nevada have been designated as adversely affected by this major disaster:

- The counties of Douglas (including the Washoe Tribe of Nevada and California within the State of Nevada), Elko (including the South Fork Band of Te-Moak Tribe of Western Shoshone), Humboldt, and Washoe and the independent city of Carson City for Public Assistance.

All areas within the State of Nevada are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Robert J. Fenton,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-07438 Filed 4-12-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4308-DR; Docket ID FEMA-2017-0001]

#### California; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA-4308-DR), dated April 1, 2017, and related determinations.

**DATES:** *Effective Date:* April 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 1, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of California resulting from severe winter storms, flooding, and mudslides during the period of February 1-23, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for

Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy J. Scranton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Kings, Lake, Lassen, Marin, Mariposa, Merced, Modoc, Monterey, Napa, Nevada, Plumas, Sacramento, San Benito, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba Counties for Public Assistance.

All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Robert J. Fenton,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-07431 Filed 4-12-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4299-DR; Docket ID FEMA-2017-0001]

#### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA-4299-DR), dated February 10, 2017, and related determinations.

**DATES:** *Effective Date:* March 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 10, 2017.

Blaine County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Robert J. Fenton,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-07432 Filed 4-12-17; 8:45 am]

**BILLING CODE 9111- 23-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-6019-N-01]

**Housing Trust Fund Federal Register Allocation Notice**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of corrected fiscal year 2016 funding allocations.

**SUMMARY:** The Housing and Economic Recovery Act of 2008 (HERA) established the Housing Trust Fund (HTF) to be administered by HUD. Pursuant to the Federal Housing Enterprises Financial Security and Soundness Act of 1992 (the Act), as amended by HERA, Division A, eligible HTF grantees are the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands.

**FOR FURTHER INFORMATION CONTACT:** Virginia Sardone, Director, Office of Affordable Housing Programs, Room 7164, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-7000; telephone (202) 708-2684. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 800-877-8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:** Section 1131 of HERA Division A amended the

Act to add a new section 1337 entitled “Affordable Housing Allocations” and a new section 1338 entitled “Housing Trust Fund.” HUD’s implementing regulations are codified at 24 CFR part 93. In accordance with Section 1338(c)(4)(A) of the Act, this notice announces the formula allocation amount for each eligible HTF grantee.

Congress authorized the HTF with the stated purpose of: (1) Increasing and preserving the supply of rental housing for extremely low-income families with incomes between 0 and 30 percent of area median income and very low-income families with incomes between 30 and 50 percent of area median income, including homeless families, and (2) increasing homeownership for extremely low-income and very low-income families.

Section 1337 of the Act provides for the HTF (and other programs) to be funded with an affordable housing set aside by Fannie Mae and Freddie Mac. The total set-aside amount is equal to 4.2 basis points (.042 percent) of Fannie Mae and Freddie Mac’s new mortgage purchases, a portion of which is for the HTF.

Section 1338 of the Act directs HUD to establish, through regulation, the formula for distribution of amounts made available for the HTF. The statute specifies the factors to be used for the formula and priority for certain factors. The factors and methodology HUD uses to allocate HTF funds among eligible grantees are established in the HTF regulation. HTF formula allocations for Fiscal Year 2016 totaling \$173,591,160 were announced in the **Federal Register** on May 5, 2016 (81 FR 27165). After

announcing these formula allocations, HUD discovered an error in its calculations for American Samoa, Guam, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands. HUD allocates HTF resources for these four Insular Areas on a pro rata demographic basis because comparable housing needs data do not exist for such jurisdictions. In determining the Fiscal Year 2016 HTF allocations, HUD inadvertently used renter populations data rather than renter households data, so that the pro rata allocation for each Insular Area was based on the ratio of between its renter population and the national total of renter households. This error inflated the allocations for Insular Areas in the aggregate amount of \$120,913. The over-allocation to Insular Areas occurred at the expense of certain states for which allocations were reduced to ensure that other states reached the \$3,000,000 minimum. HUD is required to correct the error for the Fiscal Year 2016 HTF grants. Accordingly, the HTF allocations for the Insular Areas are reduced as follows: America Samoa, –\$9,567; Guam –\$55,330; Northern Marianas, –\$23,470; and Virgin Islands, –\$32,546. In addition, the formula allocations for 15 states and the Commonwealth of Puerto Rico increased slightly. Appendix A to this notice provides the names and the corrected amounts of the Fiscal Year 2016 HTF awards.

Dated: April 10, 2017.

**Clifford Taffet,**

*General Deputy Assistant Secretary for Community Planning and Development.*

**APPENDIX A: FY 2016 HOUSING TRUST FUND ALLOCATION AMOUNTS**

Name	Original FY 2016 formula allocation	Corrected FY 2016 formula allocation	Difference	Percent difference (%)
Alabama	\$3,000,000.00	\$3,000,000.00	\$0.00	0.00
Alaska	3,000,000.00	3,000,000.00	0.00	0.00
Arizona	3,000,000.00	3,000,000.00	0.00	0.00
Arkansas	3,000,000.00	3,000,000.00	0.00	0.00
California	10,128,144.00	10,156,439.59	28,295.59	0.28
Colorado	3,000,000.00	3,000,000.00	0.00	0.00
Connecticut	3,000,000.00	3,000,000.00	0.00	0.00
Delaware	3,000,000.00	3,000,000.00	0.00	0.00
District of Columbia	3,000,000.00	3,000,000.00	0.00	0.00
Florida	4,598,821.00	4,607,302.00	8,481.00	0.18
Georgia	3,314,612.00	3,318,674.00	4,062.00	0.12
Hawaii	3,000,000.00	3,000,000.00	0.00	0.00
Idaho	3,000,000.00	3,000,000.00	0.00	0.00
Illinois	4,302,012.00	4,310,055.00	8,043.00	0.19
Indiana	3,000,000.00	3,000,000.00	0.00	0.00
Iowa	3,000,000.00	3,000,000.00	0.00	0.00
Kansas	3,000,000.00	3,000,000.00	0.00	0.00
Kentucky	3,000,000.00	3,000,000.00	0.00	0.00
Louisiana	3,000,000.00	3,000,000.00	0.00	0.00
Maine	3,000,000.00	3,000,000.00	0.00	0.00
Maryland	3,000,000.00	3,000,000.00	0.00	0.00
Massachusetts	3,419,569.00	3,423,773.00	4,204.00	0.12

APPENDIX A: FY 2016 HOUSING TRUST FUND ALLOCATION AMOUNTS—Continued

Name	Original FY 2016 formula allocation	Corrected FY 2016 formula allocation	Difference	Percent difference (%)
Michigan	3,522,622.00	3,527,747.00	5,125.00	0.15
Minnesota	3,000,000.00	3,000,000.00	0.00	0.00
Mississippi	3,000,000.00	3,000,000.00	0.00	0.00
Missouri	3,000,000.00	3,000,000.00	0.00	0.00
Montana	3,000,000.00	3,000,000.00	0.00	0.00
Nebraska	3,000,000.00	3,000,000.00	0.00	0.00
Nevada	3,000,000.00	3,000,000.00	0.00	0.00
New Hampshire	3,000,000.00	3,000,000.00	0.00	0.00
New Jersey	3,733,566.00	3,738,267.00	4,701.00	0.13
New Mexico	3,000,000.00	3,000,000.00	0.00	0.00
New York	7,013,963.00	7,033,924.00	19,961.00	0.28
North Carolina	3,280,235.00	3,284,215.00	3,980.00	0.12
North Dakota	3,000,000.00	3,000,000.00	0.00	0.00
Ohio	3,740,578.00	3,747,502.00	6,924.00	0.19
Oklahoma	3,000,000.00	3,000,000.00	0.00	0.00
Oregon	3,000,000.00	3,000,000.00	0.00	0.00
Pennsylvania	3,862,285.00	3,868,768.00	6,483.00	0.17
Rhode Island	3,000,000.00	3,000,000.00	0.00	0.00
South Carolina	3,000,000.00	3,000,000.00	0.00	0.00
South Dakota	3,000,000.00	3,000,000.00	0.00	0.00
Tennessee	3,000,000.00	3,000,000.00	0.00	0.00
Texas	4,778,364.00	4,789,476.00	11,112.00	0.23
Utah	3,000,000.00	3,000,000.00	0.00	0.00
Vermont	3,000,000.00	3,000,000.00	0.00	0.00
Virginia	3,139,830.00	3,142,439.00	2,609.00	0.08
Washington	3,243,721.00	3,246,662.00	2,941.00	0.09
West Virginia	3,000,000.00	3,000,000.00	0.00	0.00
Wisconsin	3,004,558.00	3,007,084.00	2,526.00	0.08
Wyoming	3,000,000.00	3,000,000.00	0.00	0.00
Puerto Rico	326,054.00	327,519.00	1,465.00	0.45
America Samoa	12,321.00	2,754.00	-9,567.00	-77.65
Guam	77,609.00	22,279.00	-55,330.00	-71.29
Northern Marianas	35,735.00	12,265.00	-23,470.00	-65.68
Virgin Islands	56,562.00	24,016.00	-32,546.00	-57.54

[FR Doc. 2017-07487 Filed 4-12-17; 8:45 am]  
 BILLING CODE 4210-67-P

**INTER-AMERICAN FOUNDATION**

**Sunshine Act Meetings**

**TIME AND DATE:** April 24, 2017, 9:00 a.m.–12:30 p.m.

**PLACE:** Inter-American Foundation, 1331 Pennsylvania Ave., Suite 1200, NW., Washington, DC 20004.

**STATUS:** Meeting of the Board of Directors, Open to the public.

**MATTERS TO BE CONSIDERED:**

- Approval of the Minutes of the November 14, 2016, Meeting of the Board of Directors & Advisory Management Report
- FY 2018–2022 Strategic Plan
- Advisory Council
- Adjournment

**CONTACT PERSON FOR MORE INFORMATION:** Paul Zimmerman, General Counsel, (202) 683-7118.

**Paul Zimmerman,**  
*General Counsel.*

[FR Doc. 2017-07585 Filed 4-11-17; 4:15 pm]  
 BILLING CODE 7025-01-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[LLORV00000.L10200000.DF0000.  
 LXSSH1040000.17X.HAG 17-0090]

**Notice of Public Meeting for the John Day—Snake Resource Advisory Council, Oregon**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day—Snake Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The John Day—Snake RAC will hold a public meeting on Thursday and Friday, May 18 and 19, 2017, starting at 8 a.m. Pacific Daylight Time (PDT) both days.

**ADDRESSES:** The meeting will be held at the Grand Geyser Hotel, 1996 Main Street, Baker City, OR 97814. The telephone conference line number for

the meeting is 1-866-650-5651, Participant Code: 3696961.

**FOR FURTHER INFORMATION CONTACT:** Lisa Clark, Public Affairs Officer, BLM Prineville District Office, 3050 NE 3rd St., Prineville, Oregon 97754; (541) 416-6700; or [lmclark@blm.gov](mailto:lmclark@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1(800) 877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The John Day—Snake RAC consists of 15 members appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in central and eastern Oregon. This meeting is open to the public in its entirety. Information to be distributed to

the John Day—Snake RAC is requested prior to the start of each meeting.

The May 18 meeting will consist of a field trip to the Greater sage-grouse habitat to the east of Baker City to discuss the presence of the species as well as public uses on the same land. The tour will begin at 8 a.m. PDT and end at 5 p.m. PDT. The May 19 meeting will begin at 8 a.m. PDT and end at 3 p.m. PDT. The agenda will be released online at <https://www.blm.gov/site-page/get-involved-resource-advisory-council-near-you-oregon-washington-john-day-rac> by May 1, 2017. Agenda items for the meeting include: Discussion and impressions from the field trip; the Baker County Local Improvement Team's work on Greater sage-grouse habitat improvement; Snake River management; the Walden Lake OHV trail proposal; a report from the Deschutes River fee sub-committee; and a discussion on public education opportunities. Any other matters that may reasonably come before the John Day—Snake RAC may also be addressed.

The agenda includes a 30-minute public comment period that will begin at 11:30 on May 19. Each speaker may address the John Day—Snake RAC for a maximum of 5 minutes. Meeting times and the duration of the scheduled public comment period may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the John Day—Snake RAC.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Donald Gonzalez,**

*Vale District Manager.*

[FR Doc. 2017-07484 Filed 4-12-17; 8:45 am]

**BILLING CODE 4310-33-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID BSEE-2016-0015; OMB Number 1014-0012; 17XE1700DX EEEE500000 EX1SF0000.DAQ000]

#### Information Collection Activities: Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act; Submitted for Office of Management and Budget (OMB) Review; Comment Request

**ACTION:** 30-day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act*. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

**DATES:** You must submit comments by May 15, 2017.

**ADDRESSES:** Submit comments by either fax (202) 395-5806 or email (*OIRA\_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014-0012). Please provide a copy of your comments to BSEE by any of the means below.

- Electronically go to <http://www.regulations.gov>. In the Search box, enter BSEE-2016-0015 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email [kye.mason@bsee.gov](mailto:kye.mason@bsee.gov), fax (703) 787-1546, or mail or hand-carry comments to: Department of the Interior; BSEE; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference 1014-0012 in your comment and include your name and return address.

#### FOR FURTHER INFORMATION CONTACT:

Nicole Mason, Regulations and Standards Branch, (703) 787-1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review).

#### SUPPLEMENTARY INFORMATION:

*Title:* 30 CFR part 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

*OMB Control Number:* 1014-0012.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCSLA requires open and nondiscriminatory access to oil and gas pipelines. The OCSLA provides the Secretary of the Interior the authority to issue and enforce rules to assure open and nondiscriminatory access to pipelines. These regulations provide a mechanism for entities who believe they have been denied open and nondiscriminatory access to pipelines on the OCS. The BSEE established a process, via the subject regulations, to submit complaints alleging denial of access or discriminatory access for a shipper transporting oil or gas production from Federal leases on the OCS. The complaint should include a comprehensive written brief stating the legal and factual basis for the allegation that a shipper was denied open and nondiscriminatory access, together with supporting material. Upon completion, the BSEE Director will review the complaint, answer, and other information, and will serve all parties with a written decision that may include remedial action.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104-133, 110 Stat. 1321, April 26, 1996), and OMB Circular A-25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which

accrue to the public at large. Regulations at §§ 291.106(b) and 291.108 require a nonrefundable processing fee of \$7,500 that a shipper must pay when filing a complaint to BSEE.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (FCPIA of 2015). The OCSLA directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index (CPI) to account for inflation (43 U.S.C. 1350(b)(1)). The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment, if warranted, through rulemaking and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. Regulations at §§ 291.110 and 291.113 address civil penalties for failure to provide BSEE additional requested information, and/or to comply

with a BSEE order to provide open access or nondiscriminatory access.

This authority and responsibility are among those delegated to BSEE. The regulations at 30 CFR 291 concern open and nondiscriminatory access to pipelines, and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NLTs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

Responses are voluntary but are required to obtain or retain a benefit. No questions of a sensitive nature are asked. The BSEE protects information considered confidential commercial or proprietary according to the Freedom of Information Act (5 U.S.C. 552) and DOI’s implementing regulations (43 CFR 2); 30 CFR 291.111, *How does BSEE treat the confidential information I provide*.

The BSEE uses the submitted information to initiate a more detailed review into the specific circumstances associated with a complainant’s allegation of denial of access or discriminatory access to pipelines on

the OCS. The complaint information will be provided to the alleged offending party. Alternative dispute resolution may be used either before or after a complaint has been filed to informally resolve the dispute. The BSEE may request additional information upon completion of the initial review.

*Frequency:* On occasion.

*Description of Respondents:* Potential respondents include companies that ship or transport oil and gas production across the OCS; as well as, Federal OCS oil, gas, or sulfur lessees and/or operators and holders of pipeline rights-of-way.

*Estimated Reporting and Recordkeeping Hour Burden:* The estimated annual hour burden for this information collection is a total of 51 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 291	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
Non-hour cost burden				
105, 106, 108, 109, 111 .....	Submit complaint (with fee) to BSEE and affected parties. Request confidential treatment and respond to BSEE decision.	50	1	50
		\$7,500 fee × 1 = \$7,500		
106(b), 109 .....	Request waiver or reduction of fee .....	1	1	1
104(b), 107, 111 .....	Submit response to a complaint. Request confidential treatment and respond to BSEE decision.	Information required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4(a)(2), (c))		0
110 .....	Submit required information for BSEE to make a decision.			
114, 115(a) .....	Submit appeal on BSEE final decision.			
Total Burden .....	.....	.....	2	51
		\$7,500 Non-Hour Cost Burden		

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified one non-hour cost burden of \$7,500. The BSEE requires that shippers pay a nonrefundable fee of \$7,500 for a complaint submitted to BSEE (30 CFR 291.106). The fee is required to recover the Federal Government’s processing costs.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*)

requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .” Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance

the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on September 22, 2016, BSEE published a **Federal Register** notice (81 FR 65403) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 291.1 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR part 291 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received one comment in response to the **Federal Register** notice; however, it was not germane to this collection.

**Public Availability of Comments:** Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**BSEE Information Collection Clearance Officer:** Nicole Mason, 703-787-1607.

**Authority:** The authorities for this action are the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1334), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Dated: February 28, 2017.

**Eric Miller,**

*Acting Deputy Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2017-07475 Filed 4-12-17; 8:45 am]

**BILLING CODE 4310-VH-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

[Docket ID BSEE-2016-0014; OMB Control Number 1014-0011; 17XE1700DX EEEE500000 EX1SF0000.DAQ000]

#### Information Collection Activities: Platforms and Structures; Submitted for Office of Management and Budget Review; Comment Request

**ACTION:** 30-Day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under subpart I, *Platforms and Structures*. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

**DATES:** You must submit comments by May 15, 2017.

**ADDRESSES:** Submit comments by either fax (202) 395-5806 or email (*OIRA\_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014-0011). Please provide a copy of your comments to BSEE by any of the means below.

- **Electronically:** Go to <http://www.regulations.gov>. In the Search box, enter BSEE-2016-0014 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email [kye.mason@bsee.gov](mailto:kye.mason@bsee.gov), fax (703) 787-1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014-0011 in your comment and include your name and return address.

#### FOR FURTHER INFORMATION CONTACT:

Nicole Mason, Regulations and Standards Branch, (703) 787-1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to <http://www.reginfo.gov> (select Information Collection Review, Currently Under Review).

#### SUPPLEMENTARY INFORMATION:

**Title:** 30 CFR 250, subpart I, *Platforms and Structures*.

**OMB Control Number:** 1014-0011.

**Abstract:** The Outer Continental Shelf (OCS) Lands Act (OCSLA) at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-

use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to the Bureau of Safety and Environmental Enforcement (BSEE), 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104-133, 110 Stat. 1321, April 26, 1996), and OMB Circular A-25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Various applications and reports for Platform Verification Program, fixed structure, Caisson/Well Protector, and modification repairs are subject to cost recovery, and BSEE regulations specify service fees for these requests (§ 250.125).

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act

Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (FCPIA of 2015). The OCSLA directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index (CPI) to account for inflation (43 U.S.C. 1350(b)(1)). The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment, if warranted, through rulemaking and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR 250, subpart I, pertain to Platforms and Structures and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NLTs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

While most responses are mandatory, some are required to obtain or retain a benefit. No questions of a sensitive nature are asked. The BSEE will protect

any confidential commercial or proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI’s implementing regulations (43 CFR 2); section 26 of OCSLA (43 U.S.C. 1352); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection*; and 30 CFR part 252, *OCS Oil and Gas Information Program*.

The BSEE uses the information submitted under subpart I to determine the structural integrity of all OCS platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the fixed and floating platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and prevent pollution. More specifically, we use the information to:

- Review data concerning damage to a platform to assess the adequacy of proposed repairs.
- Review applications for platform construction (construction is divided into three phases—design, fabrication, and installation) to ensure the structural integrity of the platform.

- Review verification plans and third-party reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the platform design, fabrication, and installation.

- Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved applications.

- Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

*Frequency:* On occasion, as a result of situations encountered; and annually.

*Description of Respondents:* Potential respondents include Federal OCS oil, gas, or sulfur lessees and/or operators.

*Estimated Reporting and Recordkeeping Hour Burden:* The estimated annual hour burden for this information collection is a total of 92,786 hours and \$988,210 non-hour costs. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart I and related NTLs	Reporting and/or recordkeeping requirement*	Hour burden	Average number of annual responses	Annual burden hours
Non-hour cost burdens				
<b>General Requirements for Platforms</b>				
900 thru 921 .....	General departure and alternative compliance requests not specifically covered elsewhere in subpart I regulations.	Burden covered under 30 CFR 250, subpart A, 1014–0022.		0
900(b), (c), (e); 901(b); 905; 906; 910(c), (d); 911(c), (g); 912; 913; 919; NTL(s). [PAP 904–908; PVP 909–918].	Submit application, along with reports/surveys and relevant data, to install new platform or floating production facility or significant changes to approved applications, including but not limited to: Summary of safety factors utilized in design of the platform; use of alternative codes, rules, or standards; CVA changes; and Platform Verification Program (PVP) plan for design, fabrication, and installation of new, fixed, bottom-founded, pile-supported, or concrete-gravity platforms and new floating platforms. Consult as required with BSEE and/or USCG. Re/Submit application for major modification(s)/repairs to any platform and obtain approval; and related requirements.	552 .....	43 applications .....	23,736
		\$22,734 × 2 PVP = \$45,468		
		\$3,256 × 5 fixed structure = \$16,280		
		\$1,657 × 6 Caisson/Well Protector = \$9,942		
		\$3,884 × 30 modifications/repairs = \$116,520		

## BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart I and related NTLs	Reporting and/or recordkeeping requirement *	Hour burden	Average number of annual responses	Annual burden hours
Non-hour cost burdens				
900(b)(4) .....	Submit application for approval to convert an existing platform for a new purpose.	66 .....	2 applications .....	132
900(b)(5) .....	Submit application for approval to convert an existing mobile offshore drilling unit (MODU) for a new purpose.	37 .....	1 application .....	37
900(c) .....	Notify BSEE within 24 hours of damage and emergency repairs and request approval of repairs. Submit written completion report within 1 week upon completion of repairs.	5 .....	1 notices/requests; reports.	5
		9 .....		9
900(e) .....	Submit platform installation date and the final as-built location data to the Regional Supervisor within 45 days after platform installation.	13 .....	13 submittals .....	169
900(e) .....	Resubmit an application for approval to install a platform if it was not installed within 1 year after approval (or other date specified by BSEE).	42 .....	1 application .....	42
901(b) .....	Request approval for alternative codes, rules, or standards.	Burden covered under 30 CFR 250, subpart A, 1014-0022		0
903 .....	Record original and relevant material test results of all primary structural materials; retain records during all stages of construction. Compile, retain, and provide location/make available to BSEE for the functional life of platform, the as-built drawings, design assumptions/analyses, summary of non-destructive examination records, inspection results, and records of repair not covered elsewhere.	247 .....	115 lessees .....	28,405
903(c); 905(k) .....	Submit certification statement [a certification statement is not considered information collection under 5 CFR 1320.3(h)(1); the burden is for the insertion of the location of the records on the statement and the submittal to BSEE].	This statement is submitted with the application.		0
<b>Platform Verification Program</b>				
911(c-e); 912(a-c); 914	Submit complete schedule of all phases of design, fabrication, and installation with required information; also submit Gantt Chart with required information and required nomination/documentation for CVA, or to be performed by CVA.	97 .....	2 schedules .....	194
		\$400,000 × 2 = \$800,000 CVA costs.		
912(a) .....	Submit design verification plans with your DPP or DOCD.	Burden covered under 30 CFR 550, subpart B, 1010-0151		0
913(a) .....	Resubmit a changed design, fabrication, or installation verification plan for approval.	28 .....	2 plans .....	56
916(c) .....	Submit interim and final CVA reports and recommendations on design phase.	168 .....	16 reports .....	2,688

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart I and related NTLs	Reporting and/or recordkeeping requirement*	Hour burden	Average number of annual reponses	Annual burden hours
Non-hour cost burdens				
917(a), (c) .....	Submit interim and final CVA reports and recommendations on fabrication phase, including notices to BSEE and operator/lessee of fabrication procedure changes or design specification modifications.	180 .....	12 reports .....	2,160
918(c) .....	Submit interim and final CVA reports and recommendations on installation phase.	79 .....	8 reports .....	632
<b>Inspection, Maintenance, and Assessment of Platforms</b>				
919(a) .....	Develop in-service inspection plan and keep on file. Submit annual (November 1 of each year) report on inspection of platforms or floating production facilities, including summary of testing results.	280 .....	117 lessees .....	32,760
919(b) NTL .....	After an environmental event, submit to Regional Supervisor initial report followed by updates and supporting information.	37 (initial) ..... 24 (update) .....	1 reports ..... 1 reports .....	37 24
919(c) NTL .....	Submit results of inspections, description of any damage, assessment of structure to withstand conditions, and remediation plans.	104 .....	1 result .....	104
920(a) .....	Demonstrate platform is able to withstand environmental loadings for appropriate exposure category.	81 .....	1 occurrence .....	81
920(c) .....	Submit application and obtain approval from the Regional Supervisor for mitigation actions (includes operational procedures).	87 .....	1 application .....	87
920(e) .....	Submit a list of all platforms you operate, and appropriate supporting data, every 5 years or as directed by the Regional Supervisor.	60 .....	115 operators/5 years = 23 lists per year.	1,380
920(f) .....	Obtain approval from the Regional Supervisor for any change in the platform.	48 .....	1 approval .....	48
Total Burden .....	.....	.....	362 Responses .....	92,786
			\$988,210 Non-Hour Cost Burdens	

\* In the future, BSEE will be allowing the option of electronic reporting for certain requirements.

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified non-hour cost burdens for various platform applications/installations that are associated with service fees (§ 250.125). The service fees are as follows: (1) \$22,734 for installation under the Platform Verification Program; (2) \$3,256 for installation of fixed structures under the Platform Approval Program; (3) \$1,657 for installation of Caisson/Well Protectors; and (4) \$3,884 for modifications and/or repairs. We also identified \$400,000 associated with using Certified Verification Agents in the Platform Verification Program. We have not identified any other non-hour cost burdens associated with this

collection of information, and we estimate a total annual reporting non-hour cost burden of \$988,210.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .” Agencies must specifically solicit comments to:

(a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on September 22, 2016, we published a **Federal Register** notice (81 FR 65395) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the

30 CFR 250, subpart I regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received no comments in response to the **Federal Register** notice, nor did we receive any unsolicited comments.

*Public Availability of Comments:*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Information Collection Clearance Officer:* Nicole Mason, (703) 787-1607.

Dated: February 15, 2017.

**Eric Miller,**

*Acting Deputy Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2017-07479 Filed 4-12-17; 8:45 am]

**BILLING CODE 4310-VH-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-988]

### Certain Pumping Bras: Issuance of a General Exclusion Order; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order (GEO) denying entry of certain pumping bras. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:**

Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation

may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on March 14, 2016, based on a complaint filed on behalf of Simple Wishes, LLC ("Simple Wishes") of Sacramento, California. 81 FR 13419-20 (Mar. 14, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 8,192,247 ("the '247 patent") and 8,323,070 ("the '070 patent"). The complaint further alleges that a domestic industry exists. The Commission's notice of investigation named Buywish, TANZKY, BabyPreg, and Deal Perfect, all of China, as respondents. Simple Wishes asserted the '247 patent only against respondent Buywish. The Office of Unfair Import Investigations (OUII) is also a party to the investigation.

The Commission previously determined not to review an initial determination finding respondents TANZKY, BabyPreg, and Deal Perfect in default pursuant to 19 CFR 210.16 and 210.17. *See* Commission Notice (Jul. 8, 2016); Order No. 8. The Commission also previously determined not to review an initial determination terminating the investigation as to the last remaining respondent, Buywish, based on withdrawal of the complaint. *See* Commission Notice (Aug. 9, 2016); Order No. 9. As a result of the termination of the investigation as to Buywish, the '247 patent is no longer at issue in this investigation.

On August 30, 2016, Simple Wishes filed a motion for summary determination on domestic industry and violation of section 337 by the defaulting respondents. On October 31, 2016, the ALJ issued an ID (Order No. 11) granting Simple Wishes' motion for summary determination and recommending that the Commission issue a GEO and set a bond of 100 percent during the Presidential review period. On December 14, 2016, the Commission determined to review the ID in-part, and on review, to modify the ID to set aside the patent and trademark prosecution and maintenance expenses from the domestic industry analysis. *See* 81 FR 92852-53 (Dec. 20, 2016). The Commission's determination resulted in a finding of a section 337 violation. *See id.* The Commission requested written

submissions on remedy, the public interest, and bonding. *See id.*

On January 3, 2017, Simple Wishes submitted a brief on remedy, the public interest, and bonding, requesting that the Commission issue a GEO and set a bond of 100 percent during the Presidential review period. On January 4, 2017, the Commission Investigative Attorney ("IA") also submitted a brief on remedy, the public interest, and bonding, supporting the ALJ's recommended GEO and bond of 100 percent. The IA further filed a response brief on January 11, 2017.

The Commission finds that the statutory requirements for relief under section 337(g)(2) and section 337(d)(2) (19 U.S.C. 1337(g)(2) and 1337(d)(2)) are met with respect to the defaulting respondents. In addition, the Commission finds that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the statutory relief.

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed entry of certain pumping bras that infringe one or more of claims 10, 12, 14, and 27-37 of the '070 patent. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: April 7, 2017.

**Katherine M. Hiner,**

*Acting Supervisory Attorney.*

[FR Doc. 2017-07450 Filed 4-12-17; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### United States v. DIRECTV Group Holdings, LLC, and AT&T, Inc., Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed

Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Central District of California (Western Division) in *United States of America v. DIRECTV Group Holdings, LLC, and AT&T, Inc.*, Civil Action No. 2:16-cv-08150-MWF-E. On November 2, 2016, the United States filed a Complaint alleging that DIRECTV unlawfully shared confidential, forward-looking information with competitors during the companies' negotiations to carry the SportsNet LA "Dodgers Channel," in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The proposed Final Judgment, filed on March 23, 2017, requires the Defendants to stop illegally sharing competitively-sensitive information with their rivals, to monitor certain communications their programming executives have with their rivals, and to implement antitrust training and compliance programs.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the Central District of California (Western Division). Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Scott A. Scheele, Chief, Telecommunications and Media Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 7000, Washington, DC 20530 (telephone: 202-514-5621).

**Patricia A. Brink,**  
*Director of Civil Enforcement.*

JONATHAN SALLET (DC Bar No. 336198)

JUAN A. ARTEAGA (NY Bar No. 4125464)

PATRICIA BRINK (CA Bar No. 144499)  
SCOTT SCHEELE (DC Bar No. 429061)  
LAWRENCE FRANKEL (DC Bar No. 441532)

JARED HUGHES (VA Bar No. 65571)  
CORY BRADER (NY Bar No. 5118732)  
PATRICIA CORCORAN (DC Bar No. 461905)

MATTHEW JONES (DC Bar No. 1006602)

JONATHAN JUSTL (NY Bar No.

4928222)

DAVID LAWRENCE (CT Bar No. 430642)

ANNA SALLSTROM (CA Bar No. 300281)

U.S. DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION  
450 5th Street NW., Washington, DC  
20001, Telephone: 202-514-5621,  
Facsimile: 202-514-6381, E-mail:  
[scott.scheele@usdoj.gov](mailto:scott.scheele@usdoj.gov)  
*Additional Counsel Listed on Signature Page*  
Counsel for Plaintiff,

**UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF  
CALIFORNIA**

UNITED STATES OF AMERICA,  
*Plaintiff,* v. DIRECTV GROUP  
HOLDINGS, LLC and AT&T, Inc.  
*Defendants.*

Case No. 2:16-cv-08150

**COMPLAINT**

Hon. Michael W. Fitzgerald

The United States of America, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants DIRECTV Group Holdings, LLC ("DIRECTV") and AT&T, Inc. ("AT&T") to obtain equitable relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

**I. NATURE OF THE ACTION**

1. For almost 60 years, the Los Angeles Dodgers have been a beloved professional sports team in Los Angeles ("LA"). During this time, LA Dodgers fans have seen their team win five World Series championships, closely followed the Hall of Fame careers of baseball greats such as Sandy Koufax and Tommy Lasorda, and listened to the play-by-play calls of broadcast legend Vin Scully. But a significant number of Dodgers fans have had no opportunity in recent years to watch their team play on television because overlapping and competitive pay television providers did not telecast Dodgers games. Those consumers were deprived of a fair competitive process when DIRECTV unlawfully exchanged strategic information with three competitors during their parallel negotiations concerning carrying Dodgers games.

2. This Complaint focuses on DIRECTV, the ringleader of information sharing agreements with three different rivals that corrupted the Dodgers Channel carriage negotiations and the competitive process that the Sherman Act protects. DIRECTV was the one

company that unlawfully exchanged information with multiple rivals, and without it competition would not have been harmed and none of the violations would have occurred. Accordingly, the United States seeks declaratory and injunctive relief against DIRECTV and its corporate successor AT&T.

3. In early 2013, SportsNet LA (the "Dodgers Channel"), a partnership between the LA Dodgers and Time Warner Cable ("TWC"), acquired the exclusive rights to telecast almost all live Dodgers games in the LA area. Beginning in January 2014, TWC offered various multichannel video programming distributors ("MVPDs"),<sup>1</sup> including satellite pay television provider DIRECTV, the opportunity to purchase a license to telecast the Dodgers Channel to their customers in the LA area. Distributing live local sports, like the Dodgers Channel, is a significant characteristic of competition between MVPDs, because MVPDs directly compete for subscribers who want to watch that content.

4. During negotiations with TWC and as he prepared for those negotiations, DIRECTV's Chief Content Officer, Daniel York, exchanged information with his counterparts at Cox, Charter, and AT&T about their carriage plans for the Dodgers Channel. These unlawful exchanges were intended to reduce each rival's fear that competitors would carry the Dodgers Channel, thereby providing DIRECTV and its competitors artificially enhanced bargaining leverage to force TWC to accept their terms. Through each of these information sharing arrangements, Mr. York disclosed non-public information about the status of DIRECTV's negotiations with TWC and DIRECTV's future carriage plans and, in return, learned similar non-public information from each of these competitors.

5. The sharing of this competitively sensitive information among direct competitors made it less likely that any of these companies would reach a deal because they no longer had to fear that a decision to refrain from carriage would result in subscribers switching to a competitor that offered the channel. As each company's contemporaneous business documents show, the elimination of this risk was valuable because each company identified a competitor's decision to telecast the Dodgers Channel as a significant

<sup>1</sup> MVPD is an industry acronym standing for multichannel video programming distributor, and it applies to a variety of providers of pay television services, including satellite companies (such as DIRECTV), cable companies (such as Cox and Charter), and telephone companies (such as AT&T).

development that could force it to reach a deal with TWC.

6. These competitor information exchanges took place against the backdrop of limited competition among pay television providers. Most residential consumers in the LA area had a choice of only three or four pay television providers: the incumbent cable company (like Charter, Cox, or TWC); the two national satellite pay television providers (like DIRECTV) and sometimes a telephone incumbent (like AT&T).

7. Among the small group of competitors, DIRECTV stood apart. Unlike its cable company rivals such as Cox and Charter, which have concentrated geographic footprints within the LA area, DIRECTV directly competes for subscribers with every MVPD in the LA area. Consequently, DIRECTV—which has sought to distinguish itself from other MVPDs by offering subscribers the broadest range of live sports content—was more susceptible than other MVPDs to pressure to reach a deal with TWC. In addition, DIRECTV had the most subscribers that could watch the Dodgers Channel on TWC.

8. Conversely, as the largest direct competitor of every MVPD in the LA area, a DIRECTV plan to carry the Dodgers Channel would have increased the pressure on other MVPDs to do the same in order to avoid the risk of losing subscribers to DIRECTV. As one senior DIRECTV executive noted, with its competitors “sit[ting] on the sidelines,” the company was the “first domino in the sequencing of deals.” This potential domino effect made DIRECTV a central player in the Dodgers Channel negotiations. Indeed, Cox, Charter, and AT&T all viewed DIRECTV as the competitor whose decision to carry the Dodgers Channel could force them to reach a deal with TWC, even if doing so meant paying a price above the one targeted in their internal financial analyses.

9. DIRECTV executives expressly acknowledged that they would be in a stronger bargaining position if DIRECTV’s competitors stayed on the sidelines and did not launch the Dodgers Channel. For instance, DIRECTV’s CEO Mike White told Mr. York that he believed the distributors “may have more leverage if we all stick together” and Mr. York “[a]greed” that “others holding firm is key.” A DIRECTV content executive believed that TWC would “become more creative to improve [DIRECTV’s] deal” as the rest of the industry was “waiting for us to launch.” In May of 2014, while the negotiating process was ostensibly

proceeding, Mr. White spoke publicly—and proudly—about what DIRECTV had achieved, telling the audience for a large telecommunications and media industry conference that it was important that “the distributors start to stand together, like most of us have been doing in Los Angeles for the first time ever, by the way, with the Dodgers on outrageous increases and excesses.”

10. Mr. York—the DIRECTV executive who orchestrated these bilateral information sharing agreements—regularly communicated with his counterparts at Cox, Charter, and AT&T during their Dodgers Channel negotiations with TWC. Many of these communications occurred at important points in the negotiations with TWC, such as within days of each company receiving TWC’s initial offer and when Mr. York and his counterparts were preparing to make recommendations to their CEOs.

11. During some of these communications, Mr. York assured his counterparts at Cox, Charter, and AT&T that DIRECTV would not be launching the Dodgers Channel any time soon and received similar assurances.

12. For example, when informed by Cox’s senior content executive that TWC had indicated that it was close to reaching a deal with another MVPD, Mr. York told this executive that DIRECTV was *not* the MVPD that was supposedly close to signing a deal with TWC—which was important because DIRECTV was the largest competitor to Cox in Cox’s LA service area.

13. Mr. York and his counterpart at AT&T exchanged texts and voice messages that improperly discussed non-public information about their content negotiations and future plans, including the Dodgers Channel. For example:

- In March 2014, AT&T’s most senior content executive, who was in frequent contact with Mr. York, left Mr. York a voicemail: “I had three things to catch up with you on, ah, two sports and one news.” A few days later, they spoke on the phone for twelve minutes. That same AT&T executive recommended not launching the Dodgers Channel to AT&T’s CEO the following day.

- Later that month, TWC told AT&T it was unlikely to lower its initial offer for Dodgers Channel carriage rights. That same AT&T executive—who has referred to content offers as “pitches”—again texted Mr. York: “Forgot to tell you but we got a [##] mph pitch yesterday,”<sup>2</sup> and “Consistent with what

you got?” Mr. York responded, “Hope u hit it out!”

14. Mr. York and his counterpart at Charter also communicated at key points in the Dodgers Channel negotiations. During those communications they shared non-public strategic information about their Dodgers Channel negotiations and future plans for the channel. For example, Charter’s most senior content executive recommended a Dodgers Channel strategy to his CEO for the first time the day after a phone call with Mr. York. The executive told the CEO he thought Charter should “sit[] [the Dodgers Channel] out until at least if and when Direct does a deal.” He testified that he based his recommendation on a “gut feeling” rather than a formal financial analysis. When a subordinate pushed back against his choice of strategy, the executive declined to change course, explaining “I think Direct will not be there at launch.” The Charter executive also texted Mr. York to ask to speak with him the day that he and Charter’s CEO met to set Charter’s 2014 content budget, including for the Dodgers Channel. Later in the negotiations, Mr. York and the Charter executive spoke in person about “the high price that TWC paid for the rights to SportsNet LA and was demanding for carriage.” The Charter executive testified that they discussed that the price TWC offered their respective companies for carriage was “outrageous.”

15. Based on these private communications and a series of public communications, Mr. York and his counterparts at Cox, Charter, and AT&T knew they were unlikely to lose subscribers to each other while they waited to carry the Dodgers Channel. For example, when Mr. York’s counterpart at Charter recommended that Charter delay launching the Dodgers Channel because “I think Direct will not be there at launch,” he explained that as a result there would be “nowhere to get the games in [Charter’s] markets.” Similarly, Mr. York assured DIRECTV’s CEO, Mr. White, that DIRECTV’s competitors appeared “in no rush to do a deal” for the Dodgers Channel, which was a “strategic consideration” against DIRECTV launching the channel itself.

16. The information that was exchanged as part of this scheme had an anticompetitive effect on DIRECTV’s and its competitors’ decision-making about whether to carry the Dodgers Channel. DIRECTV’s unlawful

<sup>2</sup>The actual price figures have not been included throughout the Complaint to protect competitively sensitive information. The speed of the quoted

pitch in this text matched the cents in TWC’s offer to AT&T.

information exchanges harmed competition by corrupting the competitive process that should have resulted in each company making an independent decision on whether to carry the Dodgers Channel, subject to competitive pressures arising from independent decisions made by other, overlapping MVPDs. Instead, key competing executives knew that they were safer than they should have been under a competitive process; safer because they had reason to believe that they would not lose subscribers to other MVPDs if they opted not to telecast Dodgers games. The information they shared was a material factor in their companies' Dodgers Channel decisions, with the effect of making each company less likely to reach a deal. The ultimate result: Many consumers in LA had fewer—or no—means by which to watch the Dodgers Channel. DIRECTV's unlawful information exchanges harmed consumers by making it less likely that they would be able to watch Dodgers games on television and, in the TWC territory, on the MVPD of their choice.

17. DIRECTV and each of Cox, Charter, and AT&T, respectively, agreed to share forward-looking strategic information about the Dodgers Channel, and did share that information. Their information exchanges demonstrate their agreements and reflect concerted action between horizontal competitors.

18. DIRECTV's unlawful information exchanges with Cox, Charter, and AT&T concerning carriage of the Dodgers Channel lack any countervailing procompetitive benefits and should therefore be condemned as unlawful.

19. The United States, through this action, asks this Court to declare Defendants' conduct unlawful and to enjoin Defendants from sharing strategic competitive information with other MVPDs and their executives in order to prevent further harm to competition and consumers.

## II. DEFENDANTS

20. Defendant DIRECTV is a Delaware corporation with headquarters located in El Segundo, California, offering direct broadcast satellite service nationwide. As of 2014, DIRECTV had approximately 1.25 million video subscribers in the LA area. In 2015, Defendant AT&T acquired DIRECTV in a transaction valued at approximately \$49 billion.

21. Defendant AT&T is a Delaware corporation with headquarters located in Dallas, Texas. AT&T is a multinational telecommunications company offering mobile telephone service, wireline Internet and television service, and satellite television service

through its 2015 acquisition of DIRECTV. AT&T offers wireline television service through its U-verse video product, which distributes video content using AT&T's telecommunications infrastructure. Following its acquisition of DIRECTV, AT&T is now the largest pay television provider in the United States with more than 25 million video subscribers nationwide. As of 2014, AT&T had approximately 400,000 video subscribers in the LA area.

## III. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

22. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable and other relief to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

23. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

24. This Court has personal jurisdiction over each Defendant and venue is proper in the Central District of California under 28 U.S.C. § 1391 and Section 22 of the Clayton Act, 15 U.S.C. § 22. Each Defendant transacts business in this District. Each Defendant provides pay television services to customers in this District and has substantial contacts in this District. DIRECTV committed acts in furtherance of unlawful concerted action in this District.

25. Both DIRECTV and AT&T are engaged in, and their activities substantially affect, interstate trade and commerce. Each Defendant sells video distribution services throughout the United States to millions of consumers. These sales substantially affect interstate commerce. In 2014, U.S. consumers spent a total of about \$26 billion on DIRECTV's video distribution services, and a total of about \$6.8 billion on AT&T's video distribution services. Each Defendant also purchases television content from numerous content providers in the flow of interstate commerce. In addition, each Defendant's decision not to carry the Dodgers Channel substantially affected interstate commerce. DIRECTV and AT&T could have acquired the right to offer the channel to thousands of subscribers outside of California, including subscribers in parts of Nevada and Hawaii. Moreover, each Defendant's decision not to carry the Dodgers Channel affected the sale of advertisements on that channel to companies based outside of California that would run during Dodgers games.

26. AT&T is DIRECTV's successor in interest, including for purposes of this action. When AT&T acquired DIRECTV, it acquired all of DIRECTV's stock (by merging DIRECTV into a subsidiary company wholly owned by AT&T), and thereby acquired all of DIRECTV's assets. AT&T proceeded to fully integrate DIRECTV's operations into its own, with the result that DIRECTV's operations have been continued within AT&T. Additionally, the merger agreement did not expressly limit AT&T's liabilities. These circumstances indicate AT&T's intent to assume DIRECTV's liability for these Sherman Act violations.

27. The Chief Content Officer of AT&T negotiates and supervises the negotiation of content agreements for DIRECTV, as well as for AT&T's other video platforms. These contracts may be negotiated across all AT&T's video platforms; in fact, when AT&T acquired DIRECTV, it noted that the combined companies' scale would give them greater leverage with content providers. The presence of AT&T is therefore necessary in order to effectuate the requested relief.

## IV. DIRECTV UNLAWFULLY EXCHANGED INFORMATION WITH COX, CHARTER, AND AT&T WHEN NEGOTIATING CARRIAGE OF THE DODGERS CHANNEL

### A. MVPDs Are Motivated to Seek Bargaining Leverage When Negotiating With Video Programmers

28. MVPDs spend billions of dollars on sports content each year. Over the years, MVPDs have complained about the rising cost of such content. The desire to depress the cost of sports content—often a key component of competition between MVPDs—provides MVPDs a strong incentive to obtain bargaining leverage. MVPDs may seek to unlawfully obtain bargaining leverage by engaging in collusive action designed to force sports content providers—such as TWC in this case—to accept different terms than they otherwise would in a negotiating process where MVPDs make carriage decisions independent of each other. Such collusive activity harms competition by corrupting the competitive process and ultimately harms consumers by causing likely reductions in quality and output, as happened with respect to the blackout of the Dodgers Channel, which has now covered three baseball seasons.

### **B. TWC Successfully Employed a Divide and Conquer Strategy When Negotiating Carriage of the Lakers Channel**

29. In 2011, TWC acquired the rights to locally telecast and distribute LA Lakers basketball games in the LA area.<sup>3</sup> As it would later do with the Dodgers Channel, TWC launched a new regional sports network (“RSN”) to serve as the exclusive channel telecasting these games (the “Lakers Channel”).

30. DIRECTV initially declined to carry the Lakers Channel, reasoning that TWC’s asking price was too high and that it could negotiate a better rate than its smaller competitors if it held out. However, TWC sought to increase the competitive pressure on DIRECTV, realizing that DIRECTV would be more likely to carry the Lakers Channel if its smaller competitors carried the channel because such a move would expose DIRECTV to the risk of losing subscribers to these competitors. Accordingly, TWC approached the smaller MVPDs with a time-sensitive offer: in exchange for an early agreement to carry the Lakers Channel, the smaller distributors would receive a size-insensitive most favored nation clause (“MFN”) in their carriage agreements. This clause would guarantee the smaller distributors that they would get the same price for the Lakers Channel as a larger distributor, such as DIRECTV (although it is common industry practice that larger companies with more subscribers pay a lower price per subscriber than their smaller competitors).

31. During the negotiations over carriage of the Lakers Channel, Mr. York heard a “rumor” about TWC’s size-insensitive MFN offer. Mr. York was concerned that if the smaller distributors buckled under the pressure of the MFN offer and agreed to carry the Lakers Channel before the larger distributors negotiated a deal, it would “empower[] TWC to hold firm on their price.” Mr. York was right.

32. Charter signed a Lakers Channel carriage agreement on October 25, 2012, just before the NBA season started. At that time, Mr. York told a colleague that he believed Charter agreed to TWC’s rates in order to get the MFN protection.

<sup>3</sup> The Lakers ownership sold TWC the rights to telecast certain Lakers games to the local LA television market. This type of local, team-based rights deal, exemplified in TWC’s acquisition of the rights to both the Lakers and the Dodgers Channels, is distinct from the broadcasting deals negotiated by the leagues themselves, such as the NBA or MLB. Those national deals convey the rights to broadcast a certain number of league games on nationwide networks, such as ESPN or the Turner channels.

33. Two days later, on October 27, 2012, AT&T signed a Lakers Channel carriage deal.

34. The Lakers season tipped off on October 30, 2012.

35. The MVPDs that had already launched the Lakers Channel aggressively marketed against their competitors that had not reached a deal with TWC. They sensed an opportunity to win subscribers who wanted to watch Lakers games live on television but could not due to their video provider’s lack of carriage. For example, Charter ran radio advertisements targeting AT&T before AT&T’s U-verse video service launched the Lakers Channel. Similarly, after launching the Lakers Channel, AT&T began using a marketing campaign in its stores targeting Cox subscribers: “See both Padres and Lakers on U-verse TV but not Cox.”

36. TWC succeeded in its strategy. On November 7, 2012, less than one week after the NBA season started, Cox agreed to carry the Lakers Channel. Cox had intended to hold out, but AT&T—which offers its U-verse video service inside the Cox local market—was offering the Lakers Channel. Cox agreed to pay TWC’s full asking price despite internal analyses estimating the Lakers Channel was worth significantly less. Indeed, Cox paid nearly 60% higher than its analyses had initially suggested the Lakers Channel was worth.

37. DIRECTV faced a similar dilemma. Most of its competing video distributors in the LA area had launched the Lakers Channel, and it was losing hundreds of customers per week to them. Consequently, on November 14, 2012, ten days after Cox agreed to carry the Lakers Channel, DIRECTV agreed to pay TWC’s initial asking price, even though DIRECTV’s internal analyses estimated that carriage of the Lakers Channel was worth significantly less. DIRECTV agreed to pay almost 50% more than its internal financial analysis suggested.

38. Moreover, TWC was able to point to the size-insensitive MFNs in the smaller distributor carriage agreements as a reason not to offer DIRECTV a lower per subscriber fee for the Lakers Channel.

39. Thus, DIRECTV rolled the dice during the Lakers Channel negotiations but lost because TWC was able to pursue a divide-and-conquer strategy by offering DIRECTV’s smaller competitors financial incentives to sign a deal early in the negotiating process. Having been burned by this experience, DIRECTV approached the Dodgers Channel negotiations determined not to allow TWC to successfully employ such a strategy again.

### **C. DIRECTV Was Intent on Ensuring That Its Competitors Stood With It Against TWC When Negotiating Carriage of the Dodgers Channel**

40. A few months after successfully outmaneuvering DIRECTV during the Lakers Channel negotiations, TWC acquired, in January 2013, the local telecast rights for Dodgers baseball games beginning in the 2014 season. As it had with the Lakers, TWC launched a new RSN—the Dodgers Channel—to serve as the exclusive home for Dodgers games. Media reports at the time suggested that TWC would likely seek monthly distribution rates close to \$5 a month per subscriber for the Dodgers Channel.

41. In January 2014, TWC began discussing carriage of the Dodgers Channel with other LA area video distributors. In doing so, TWC sought a higher per subscriber rate from each distributor for carriage in the LA area (“Zone 1”), and lower per subscriber rates in other zones, located in regions further from LA.

42. But, unlike TWC’s experience with the Lakers Channel, none of TWC’s competitors agreed to carry the Dodgers Channel that year.

43. Hundreds of thousands of LA area residents—essentially, everyone living outside of TWC’s service area—were unable to watch most televised Dodgers games during the 2014 baseball season.<sup>4</sup>

44. To this day, TWC and its affiliates remain the only LA area video distributors that carry the Dodgers Channel, following a negotiation process corrupted by DIRECTV’s orchestration of unlawful information sharing agreements with Cox, Charter, and AT&T.

#### *i. DIRECTV, Cox, Charter, and AT&T Acknowledged That Their Competitors’ Carriage Decisions Would Significantly Influence Whether They Decided to Launch the Dodgers Channel*

45. In assessing whether to carry the Dodgers Channel, DIRECTV conducted financial analyses indicating that DIRECTV’s decision not to carry the Dodgers Channel would cause it to lose tens of millions of dollars in subscriber revenues in 2014 and each year thereafter. These financial analyses also indicated that this anticipated loss would be reduced by approximately

<sup>4</sup> Bright House Networks, which is affiliated with TWC but does not operate in the LA area, carried the Dodgers Channel in its first season. Charter reached an agreement to carry the Dodgers Channel in 2015, after signing a deal to acquire TWC. Champion Broadband reached a deal to carry the Dodgers Channel in 2014, but had only about 3,000 video subscribers in Arcadia and Monrovia, California, and has since gone out of business.

40% if none of DIRECTV's competitors (other than TWC) carried the Dodgers Channel. Thus, DIRECTV calculated exactly how much money it would save if other MVPDs in the LA area did not launch the Dodgers Channel. Moreover, DIRECTV understood that, in order to reduce the likelihood that its subscribers would switch providers, it might have to pay more than its financial analyses suggested it should pay if any of its competitors decided to carry the Dodgers Channel, which is precisely what had happened with the Lakers Channel.

46. Similarly, Cox, Charter, and AT&T each concluded that the decision of a competitor to carry the Dodgers Channel would be a significant development that could force each of them to reach a deal with TWC. For example, on September 18, 2013, Charter's head of content acquisition suggested to Charter's CEO that "we discuss sitting this one out until at least if and when Direct does a deal." Similarly, an undated Cox "Dodgers Discussion" document states that Cox should "consider a rate MFN'd deal only in the event DirecTV, Dish or AAT do a deal, accept any related rate penalty if we are forced to." In addition, a February 26, 2014 Dodgers Channel presentation by AT&T's President of Content recommended to his direct supervisor that a "key decision point[ ]/ risk factor[ ]" would be "carriage decisions by DirecTV."

#### **D. DIRECTV Orchestrated and Implemented Dodgers Channel Carriage Information Exchanges With Cox, Charter, and AT&T**

47. Given that TWC's negotiating strategy had forced DIRECTV to pay more for the Lakers Channel than it thought the channel was worth, DIRECTV and its Chief Content Officer, Mr. York, were determined not to let that happen again. To achieve this objective, Mr. York orchestrated a series of unlawful bilateral information sharing agreements with three of DIRECTV's MVPD competitors: Cox, Charter, and AT&T.

48. In numerous phone calls and other private conversations, Mr. York and his counterparts at DIRECTV's rivals Cox, Charter, and AT&T discussed non-public information about the status of their negotiations with TWC and their

future plans about whether to carry the Dodgers Channel. For instance:

- Cox's senior content executive, the Senior Vice President of Content Acquisition, testified under oath that he and Mr. York discussed their companies' Dodgers Channel carriage plans on multiple occasions. During one of these conversations, the Cox executive inquired about the status of DIRECTV's negotiations with TWC because TWC had indicated to him that it was close to reaching a deal with a video distributor. Mr. York responded that DIRECTV was not close to signing a deal and the two executives agreed to give one another a "heads-up" before launching the Dodgers Channel.

- Mr. York also offered to give this Cox executive an opportunity to sign a Dodgers Channel deal with TWC first before DIRECTV and thus protect any MFN terms.

- Charter's senior content executive, the Senior Vice President of Programming, testified under oath that he and Mr. York discussed that the price TWC offered their respective companies for the right to carry the Dodgers Channel was "outrageous."

- In a two-hour span the day after DIRECTV received TWC's initial Dodgers Channel offer, Mr. York spoke or attempted to speak with his counterparts at Cox, Charter, and AT&T. Mr. York later recommended against launching the channel because "other MVPDs appear in no rush to do a deal." At that point in time, no distributor had made public statements about its Dodgers Channel carriage negotiations or plans.

- AT&T's senior content executive, the President of Content and Advertising Sales, called Mr. York on the day that he presented his recommendation against AT&T carrying the Dodgers Channel to his direct supervisor. Over the course of the next few weeks, this AT&T senior executive attempted to speak with Mr. York on multiple occasions and did speak to him the day before he presented his recommendation to AT&T's CEO.

49. Despite reservations about the carriage price TWC would request for the Dodgers Channel, DIRECTV's content team indicated in October 2013 that the company should "Plan to Launch" the Dodgers Channel and directed DIRECTV's technical staff to

allocate sufficient satellite capacity to accommodate the network.

50. On January 21, 2014, TWC presented its first formal Dodgers Channel carriage offer to a group of DIRECTV content executives, including Mr. York.

51. The next day, Mr. York spoke with his Cox counterpart for twenty minutes and his Charter counterpart on a call or voicemail lasting about thirty seconds. Later that day, Mr. York and his AT&T counterpart spoke for twelve minutes. Mr. York spoke with his Charter counterpart for twenty minutes on January 29, 2014.

52. Around this time period, a senior DIRECTV content executive emailed Mr. York to discuss the disagreement between DIRECTV's marketing and content groups about whether to carry the Dodgers Channel. He asked for Mr. York's "thoughts about having a meeting" with the marketing team before the groups met with DIRECTV's CEO, Mr. White, on February 4, 2014 about carrying the Dodgers Channel, because the content team "think[s] don't do a deal," while the marketing team "want[s] to do a deal." The DIRECTV marketing team had calculated that TWC's asking price was higher than financial analysis suggested it was worth—but nonetheless recognized that other factors not captured in that calculation made the Dodgers Channel worth carrying.

53. In preparing for the meeting with DIRECTV's CEO, the marketing team put together a draft presentation deck that emphasized the Dodgers' iconic reputation and the fact that carrying the Dodgers Channel was important to DIRECTV's marketing strategy of being a leader in sports content. For example, the deck listed as reasons for doing a deal that "LA is our largest subscriber market" and that "not offering a marquee franchise will significantly diminish our sports leadership claim." Mr. York edited this deck before it was presented to DIRECTV's CEO. Notably, on a slide listing strategic considerations for and against carrying the Dodgers Channel, Mr. York, having spoken with his counterparts at Cox, Charter, and AT&T added that one reason DIRECTV should not carry the channel at TWC's asking price was that "[o]ther MVPDs appear in no rush to do a deal."

**Against Deal**

- Carriage of Dodgers and the associated high rates will set a precedent and embolden other rights holders, and lead to higher sports costs over time; Will require other trade offs <sup>all other CBS</sup>

- Other MVPDs appear in no rush to do a deal, Dish very unlikely
- ~~Dish very unlikely~~ others? worse than Houston, which we don't carry <sup>Pacific</sup>

54. At the time that Mr. York made this edit, no other distributor had made public statements about its Dodgers Channel carriage negotiations or plans.

55. On February 4, 2014, Mr. York, along with members of his content team

and DIRECTV's marketing team, met with Mr. White to discuss their strategy for responding to TWC's offer. At this meeting, Mr. York and his colleagues recommended against carrying the Dodgers Channel at TWC's asking price.

To support this recommendation, Mr. York used the presentation deck mentioned above, which incorporated his edit indicating that "[n]o other MVPD appears to be in a rush to do the Dodgers deal" in the final text.

**Against Deal**

- Carriage of Dodgers and the associated above market rates will set a bad precedent and embolden all other rights holders (not just confined to sports) and will lead to higher content costs over time
- No other MVPD appears to be in a rush to do the Dodgers deal; Dish very unlikely to ever carry network
- Dodgers deal is a more expensive, off-market deal than either the PAC-12 or CSN Houston which DTV chose not to carry

56. Based on the information he was provided, Mr. White "planned to carry the channel" and "budgeted to carry the channel," but hoped to negotiate TWC down from its initial asking price. Following the February 4, 2014 meeting with Mr. White, DIRECTV informed TWC that its initial asking price was too high.

57. About one month later, Mr. White sent an email to Mr. York declaring that the MVPDs "may have more leverage if we all stick together" on the Dodgers Channel. Mr. York "[a]greed" that "others holding firm is key." This email exchange occurred right before the start of the 2014 baseball season and during the heart of TWC's Dodgers Channel negotiations.

58. Two months later, Mr. White made a similar pronouncement during an industry conference, stating that MVPDs should "start to stand together, like most of us have been doing in Los Angeles for the first time ever, by the way, with the Dodgers on outrageous increases and excesses." At the time that Mr. White made this public statement, Mr. York had already been having discussions with his counterparts at Cox, Charter, and AT&T and, unsurprisingly, none of them had

reached a deal with TWC to carry the Dodgers Channel.

59. During DIRECTV's negotiations with TWC, at least one person informed DIRECTV that Mr. York had exchanged strategic information with competitors in order to facilitate a Dodgers Channel blackout in the LA area. In April 2014, an anonymous complaint filed on the DIRECTV ethics portal claimed that Mr. York had been "[s]peaking with other satellite, cable, and telco companies about NOT carrying the Dodgers on DIRECTV." Similar internal ethics complaints about Mr. York's exchanges of information with competitors were filed in May and September 2014.

60. Publicly messaging its opposition to TWC's initial offer for Dodgers Channel carriage also helped DIRECTV to further its information sharing scheme. A DIRECTV executive told Mr. York and others that DIRECTV's competitors were emboldened to "sit on the sidelines" because they had not "seen any 'not if, but when' rhetoric from DTV" regarding carriage of the Dodgers Channel, and encouraged DIRECTV employees to "message internally and externally alike that we are NOT doing the Dodgers deal." A DIRECTV executive testified that if

DIRECTV had "started messaging that we are going to do a deal, that probably would have spurred on others to do the deal" and that such a scenario "wouldn't benefit [DIRECTV] in any way." This testimony further reflects the fact that DIRECTV understood that its expected carriage plans would have a domino effect on competitors in the Dodgers Channel negotiations with TWC.

61. Accordingly, DIRECTV employees regularly touted their opposition to carrying the Dodgers Channel in the press. For instance, in March 2014, Mr. York was quoted in the press stating that it was "highly unlikely that anybody of any real merit will be carrying that network soon." The same article also reported that Mr. York "predict[ed]" that the Dodgers carriage "logjam will not break before the first week of the new season is over and perhaps not for a long time after that." In April 2014, Mr. York was quoted as stating that DIRECTV had an obligation to "not say[] yes to everything that's proposed" to it when he was asked about carriage of the Dodgers Channel.

62. At the beginning of the 2014 baseball season, on March 29, 2014, TWC offered DIRECTV incentives and

other terms of value that significantly improved its offer. DIRECTV did not accept the offer, but rather, on April 16, 2014, responded by counter-proposing a lower rate structure and several free months.

63. After no MVPD agreed to carry the Dodgers Channel, TWC offered in August 2014 to allow immediate carriage of the Dodgers Channel by any video distributor that agreed to binding arbitration. Specifically, TWC proposed that both it and any interested distributor submit their best-and-final offer to a mutually agreed-upon arbitrator, who would then decide which proposal reflected the most fair carriage terms. This offer had no price floor, but no video distributor agreed to arbitration, even though arbitration would have allowed each MVPD to present its valuation analysis to a neutral party who could order TWC to accept that valuation without regard to TWC's previous bargaining position.

64. DIRECTV still does not carry the Dodgers Channel even though it has otherwise sought to distinguish itself from competitors by offering consumers the broadest range of sports content.

*ii. DIRECTV and Cox Shared Non-Public Competitively Sensitive Information About Their Future Dodgers Channel Carriage Plans*

65. Mr. York and his counterpart at Cox, the Senior Vice President of Programming, agreed to share forward-looking strategic information about the Dodgers Channel, and did share that information. Their exchanges of information demonstrate their agreement and reflect concerted action between horizontal competitors.

66. On October 2, 2013, Cox's then-incoming Senior Vice President of Programming and his colleagues met to discuss their carriage plans for the Dodgers Channel. They concluded that Cox should decline carrying the network unless one of the video distributors that overlapped with Cox's service area, such as DIRECTV or AT&T, reached a deal with TWC, at which point Cox would need to reassess its position.

67. Eight days later, on October 10, 2013, Cox's incoming Senior Vice President of Programming met Mr. York for breakfast in New York City. That executive has admitted that he and Mr. York discussed the "rising sports costs" their competing companies faced, including the Dodgers Channel.

68. On January 21, 2014, TWC presented its initial formal Dodgers Channel carriage offer to DIRECTV. The next day, Mr. York called his Cox counterpart and they spoke for twenty

minutes. That same day, Mr. York also spoke or attempted to speak with his counterparts at Charter and AT&T.

69. On January 27, 2014, TWC presented its formal Dodgers Channel carriage offer to Cox. TWC asked for the same rate structure as it had sought from DIRECTV and other video distributors.

70. On February 4, 2014, Cox decided that it was interested in pursuing an *a la carte* carriage deal under which Cox would only pay a rate based on subscribers that watched the Dodgers Channel instead of a rate based on all its subscribers. That same day, Mr. York gave DIRECTV's CEO a presentation reflecting Mr. York's knowledge that DIRECTV's competitors "appear[ed] in no rush to do a deal."

71. During the first quarter of 2014, Cox increased its monthly fees for all subscribers in the LA area. Cox increased its prices in part to recoup the anticipated cost of carrying the Dodgers Channel, which it never launched.

72. Mr. York spoke with his Cox counterpart, the Senior Vice President of Programming, on at least ten separate occasions between March and July 2014 as the baseball season began and the companies' Dodgers Channel carriage negotiations continued. At least seven of their phone conversations were more than ten minutes long.

73. Cox's Senior Vice President of Programming has admitted under oath that he and Mr. York shared strategic information about their companies' non-public, future Dodgers Channel carriage plans on at least two calls.

74. During one call, which took place between March and June of 2014, Cox's Senior Vice President of Programming reached out to Mr. York after TWC told him that "an agreement between another distributor and SportsNet LA was imminent." The Cox executive called Mr. York to ask "if DIRECTV was the other distributor." Mr. York told the Cox executive that DIRECTV was not close to launching. During this conversation, they expressly agreed to "give each other a heads-up if their respective MVPDs were going to launch" the Dodgers Channel "before it was public knowledge."

75. In another call during the same time period, Mr. York called his Cox counterpart and said that "before DIRECTV were to sign a deal [to carry the Dodgers Channel], Mr. York would let [him] know, in case [he] wanted to sign a deal and protect any MFN terms, so [Cox] could choose to sign first." Mr. York's offer to forgo a first-mover advantage was contrary to DIRECTV's own economic interest as his plan could risk the terms DIRECTV would have negotiated with TWC and could also

reduce the costs of one of DIRECTV's competitors.

76. Cox did not carry the Dodgers Channel in 2014 and has still not reached an agreement to carry the channel. Consumers located in the Cox service territory in the LA area did not have regular access to most televised Dodgers games during the 2014, 2015, and 2016 baseball seasons.

*iii. DIRECTV and Charter Shared Non-Public Competitively Sensitive Information About Their Future Dodgers Channel Carriage Plans*

77. Mr. York and his counterpart at Charter, the Senior Vice President of Programming (the most senior content executive at Charter), agreed to share forward-looking strategic information about the Dodgers Channel, and did share that information. Their exchanges of information demonstrate their agreement and reflect concerted action between horizontal competitors.

78. Charter conducted no formal analysis to assess the value of offering the Dodgers Channel. Instead, Charter's Senior Vice President of Programming recommended a strategy—that Charter hold out until DIRECTV carried the Dodgers Channel and then reevaluate. Charter's senior content executive testified that his recommendation on this important carriage decision was based on a "gut feeling early on in the process" that Charter should not be the first MVPD to launch the Dodgers Channel, which "sort of solidified, came together by the end of summer, fall of 2013." Mr. York and his counterpart at Charter spoke on the phone at least twice during that time period.

79. Mr. York and his Charter counterpart had a history of sharing information with one another about strategic negotiations and plans while negotiations were ongoing. In January 2014 (as discussions about the Dodgers Channel began to heat up), DIRECTV's carriage negotiations with The Weather Channel failed and the channel went into a blackout on DIRECTV. During the blackout, The Weather Channel sought to run advertisements attacking DIRECTV over Charter's service. Charter's Senior Vice President of Programming left a voicemail for Mr. York. In the voicemail, this Charter senior executive assured Mr. York that he would stop The Weather Channel from running such an ad over Charter's service, calling the favor "my little bit for the planet earth."

80. Similarly, in September 2014, Charter's Senior Vice President of Programming left Mr. York several voicemails concerning Charter's negotiations with the co-owner of Hulu

about Hulu's online subscription video service, letting him know that Charter was not inclined to allow its video subscribers to access Hulu's service using their Charter accounts, and asking if DIRECTV planned to reach a deal concerning Hulu. Charter's Senior Vice President of Programming left Mr. York at least one voicemail speaking in coded language about Charter's ongoing negotiations with Hulu's co-owner: "I was going to get doing it if I had to, but then I remembered a little birdie saying that you were busy with my heavyweight friend perhaps."

81. On September 17, 2013, Mr. York and his counterpart at Charter spoke to one another on the phone. The day after this conversation, Mr. York's Charter counterpart proposed for the first time to Charter's CEO that Charter adopt a strategy of waiting for DIRECTV to carry the Dodgers Channel. Specifically, this senior executive "[s]uggest[ed] we discuss sitting this one out until at least if and when Direct does a deal."

82. On October 24, 2013, Charter's Senior Vice President of Programming met with his CEO to set Charter's content budget for 2014, including estimated costs for carrying the Dodgers Channel. This senior executive proposed that Charter "hold tight, see where we are in July . . . if Direct goes in May/June we can still get that deal. But let it play out." Later that day, this senior executive texted Mr. York: "Can I call you now? Funny had something for u. Where can I call."

83. On November 5, 2013, a subordinate of Charter's Senior Vice President of Programming suggested that Charter take a "first in strategy" with the Dodgers Channel that would "guarantee[] carriage and put[] pressure on others" while affording Charter "solid MFN" protection, such as the MFN protection Charter received from TWC during the Lakers Channel negotiations. Charter's Senior Vice President of Programming declined to pursue the same strategy that Charter had used for the Lakers Channel, explaining that "I think Direct will not be there at launch. Maybe AT&T will but if no [satellite] carriage at launch there is nowhere to get the games in our markets." At the time, DIRECTV had not made any public statements about its Dodgers Channel carriage plans.

84. On January 21, 2014, TWC made its initial offer to DIRECTV. Mr. York called his counterpart at Charter the following afternoon (and spoke with both his Cox counterpart and AT&T counterpart). On January 23, 2014, TWC sent Charter its Dodgers Channel offer. After playing phone tag for several days, Mr. York and his Charter counterpart

had a twenty-minute call on January 29, 2014.

85. Charter's Senior Vice President of Programming consistently told TWC that Charter would not consider carrying the Dodgers Channel unless DIRECTV launched first.

86. Charter's Senior Vice President of Programming admitted that, on April 30, 2014, about one month after the baseball season began but while negotiations were still continuing, he and Mr. York discussed "the high cost of sports programming, including the high price that TWC paid for the rights to SportsNet LA and was demanding for carriage." He also testified that he and Mr. York discussed that the price TWC offered their respective companies for carriage was "outrageous."

87. Charter did not carry the Dodgers Channel during the 2014 baseball season. Subscribers located in the Charter service territory in the LA area did not have regular access to most televised Dodgers games during the 2014 baseball season or at the start of the 2015 season.

88. Charter announced that it would acquire TWC in May 2015. Soon thereafter, Charter agreed to carry the Dodgers Channel.

#### *iv. DIRECTV and AT&T Shared Non-Public Competitively Sensitive Information About Their Future Dodgers Channel Carriage Plans*

89. Mr. York and his counterpart at AT&T, the most senior content executive there, agreed to share forward-looking strategic information about the Dodgers Channel, and did share that information. Their exchanges of information demonstrate their agreement and reflect concerted action between horizontal competitors.

90. Mr. York's AT&T counterpart became President of Content and Advertising Sales ("President of Content") in June 2013 and Mr. York, who previously had worked at AT&T, cultivated a close relationship with this person. Mr. York offered to "show [him] around [LA] and help meet the players in this crazy content world." Thus, as AT&T's President of Content testified, Mr. York "helped [him] get a lay of the land in the industry" and introduced him to "various players in the industry."

91. AT&T's President of Content understood the importance of developing relationships with AT&T's direct competitors. In a handwritten note taken a few weeks after assuming his new position, he wrote that he "need[ed] to go meet industry peers," including DIRECTV. Mr. York organized a one-on-one breakfast with his AT&T

counterpart several weeks later at a hotel near AT&T's offices.

92. On January 16, 2014, TWC presented its formal Dodgers Channel carriage offer to AT&T. TWC asked for the same rate structure as it later sought from DIRECTV and other video distributors.

93. On January 21, 2014, AT&T's President of Content met with other members of his content team to discuss TWC's offer. Like Charter's Senior Vice President of Programming, AT&T's President of Content indicated that his "gut" instinct was to "sit on sidelines," but noted that the possibility that "DIRECTV may move" was a factor that could cause AT&T to revisit its position.

94. On January 22, 2014, Mr. York and his AT&T counterpart spoke for twelve minutes. At the time of this call, DIRECTV and AT&T had both recently received Dodgers Channel offers from TWC.

95. On February 25, 2014, an AT&T Vice President expressed concern that his earlier public comments to Bloomberg News about the Dodgers Channel were "too vanilla" and stated that AT&T might "need to take more of a stand." Ten days later, the executive suggested that AT&T publicly communicate its Dodgers Channel carriage "position more aggressively to influence other MVPD's strategy."

96. On February 26, 2014, AT&T's President of Content and his content team recommended to his direct supervisor that AT&T decline to launch the Dodgers Channel at TWC's asking price. They described AT&T's "initial implementation strategy" as "[h]old-out as long as DirecTV does not carry." The day of this presentation, AT&T's President of Content left a voicemail for Mr. York. He then tried to reach Mr. York on February 28, 2014, texting "Just tried you. I am around if you free up. I will try u tomorrow if not." Then, the next day, AT&T's President of Content left another voicemail for Mr. York, this time stating "I had three things to catch up with you on, ah, two sports and one news."

97. After leaving this message, AT&T's President of Content went to AT&T's Dallas headquarters for a series of strategy meetings and kept trying to reach Mr. York. This AT&T senior executive and Mr. York finally spoke for twenty minutes on March 4, 2014. The next day, this same AT&T executive met with AT&T's CEO to discuss TWC's Dodgers Channel offer. AT&T's President of Content "recommend[ed] not launching [the Dodgers Channel] unless TWC reduces the rate materially," but noted that DIRECTV launching was an "outstanding risk

factor.” This AT&T executive’s handwritten notes explained that AT&T’s “intent [was] to message but hold, pivot if we have to—DTV!”

98. On March 11, 2014, TWC told an AT&T negotiator that it “was unlikely to move off [its] initial asking price of \$[###] now because [TWC] wouldn’t be able to offer [AT&T] a lower rate and not offer it to a larger distributor.”

99. The next day, Mr. York texted AT&T’s President of Content “Got a sec to talk?” and Mr. York’s AT&T counterpart responded “Yep. You on cell or work?” Mr. York responded “Work.” The following day, AT&T’s President of Content—who has referred to carriage offers as “pitches”—again texted Mr. York “Forgot to tell you but we got a [###] mph pitch yesterday.”<sup>5</sup> A few hours later, AT&T’s President of Content continued “Consistent with what you got?” and Mr. York responded “Hope u hit it out!” This exchange occurred only two days after TWC had informed AT&T that it was unlikely to change its initial asking price.

100. AT&T acquired DIRECTV in July 2015. AT&T still does not carry the Dodgers Channel. AT&T subscribers outside of TWC’s service territory in the LA area did not have regular access to most televised Dodgers games during the 2014, 2015, or 2016 baseball seasons.

## V. DIRECTV’S INFORMATION EXCHANGES HAD THE LIKELY EFFECT OF HARMING COMPETITION

### A. Defendants Have Market Power—the Ability to Harm Competition—in the Market for Video Distribution Services

101. One tool that courts use to assess the competitive effects of concerted action is defining a relevant market—the zone of competition among the agreeing rivals in which the agreement may affect competition. A relevant market contains both a product dimension (the “product market”) and a geographic dimension (the “geographic market”). This case concerns the distribution of professional video content (especially sports content) by MVPDs in multiple geographic markets.

#### *i. Video Distribution Service Is a Relevant Product Market*

102. Video distributors acquire the rights to transmit video content from programmers, then aggregate that content and distribute it to subscribers who pay for the service. For example,

<sup>5</sup> As explained above, although the actual price figures have been omitted to protect competitively sensitive information, the speed of the quoted pitch in this text matched the cents in TWC’s offer to AT&T.

subscribers to an MVPD’s pay television service typically purchase access to a sizeable array of channels, including for example news, dramas, and reality television programs, as well as the type of sports content at issue in this case. Subscribers, as well as industry participants, view these services as reasonably interchangeable with each other. Moreover, subscribers and industry participants view video distribution services as distinct from—and not reasonably interchangeable with—other forms of entertainment, such as attending live sports games or a music concert. The distribution of professional video programming services to residential or business customers (“video distribution services”) is a relevant product market.

103. Video distributors compete with each other on price and programming content to attract and retain paid video customers. MVPDs, especially DIRECTV, often attempt to distinguish themselves from their competitors on the basis of sports content. DIRECTV bills itself as the “undisputed leader” for sports content among video distributors and, to support that claim, spends over \$1 billion each year to obtain the exclusive rights to provide NFL Sunday Ticket and features it prominently in its marketing materials.

104. Local sports content is a crucial component of competition between video distributors. Sports are often telecast locally on RSNs, and DIRECTV has publicly identified the availability of RSNs as vital to its ability to compete. In filings submitted to the Federal Communications Commission (“FCC”) regarding its program access regulations, which had previously reduced DIRECTV access to local RSNs, DIRECTV described local sports content on RSNs as “some of the most popular and expensive in the market” and questioned whether a video distributor could compete at all without access to this programming. DIRECTV even complained that a cable company’s decision to deny DIRECTV access to an RSN “caused a 33 percent reduction in the households subscribing to [satellite TV] service.”

#### *ii. The Cox and Charter LA Service Areas Are Relevant Geographic Markets*

105. Consumers seeking to purchase video distribution services must choose from among those providers that can offer such services directly to their home or business. Direct broadcast satellite providers, such as DIRECTV, can serve customers almost anywhere in the United States. In addition, online video distributors are available to any consumer with internet service

sufficient to deliver video of an acceptable quality. In contrast, wireline video distributors such as cable and telephone companies, which include Cox, Charter, and AT&T, serve only distinct geographic areas where they have deployed network facilities. A customer cannot purchase video distribution services from a wireline distributor that does not operate network facilities that connect to the customer’s home or business.

106. Thus, from a customer’s perspective, the relevant geographic market for video distribution services is whatever services are available on an individual location-by-location basis. For ease of analysis, however, these markets can be aggregated to portions of the local franchise areas, or footprints, of the various video distribution service providers where consumers face similar service-provider choices.

107. In the Dodgers Channel carriage area in 2014, three cable companies offered video distribution services to a significant area: TWC, Cox, and Charter.<sup>6</sup> The service areas of these three cable providers did not overlap.

108. Cox’s service area within the LA area is a relevant geographic market. As discussed further below, consumers within this area generally faced the same service-provider choices. Customers within the Cox service area could choose from Cox, DIRECTV, DISH, and nationwide online providers. Some customers within the Cox service area might have AT&T or Verizon as an additional competitive option, but not both. Nevertheless, because a small but significant price increase by a hypothetical monopolist of video distribution services in this area would not be made unprofitable by consumers switching to other services offered outside of the area, the Cox LA service area is a relevant geographic market.

109. Charter’s service area within the LA area is also a relevant geographic market. As discussed further below, consumers within this area generally faced the same service-provider choices. Customers within the Charter service area could choose from Charter, DIRECTV, DISH, and nationwide online providers. Some customers within the Charter service area might have AT&T or Verizon as an additional competitive option, but not both. Nevertheless, because a small but significant price

<sup>6</sup> Mediacom and Suddenlink also operated in the LA area in 2014, but each had fewer than 5,000 video subscribers. With less than 0.5% of LA area total subscribers, neither was competitively significant for purposes of this case. For comparison, TWC (30%), Charter (6.3%), and Cox (5.3%) each had at least 200,000 video subscribers in the LA area.

increase by a hypothetical monopolist of video distribution services in this area would not be made unprofitable by consumers switching to other services offered outside of the area, the Charter LA service area is a relevant geographic market.

*iii. There Are High Barriers to Entry, Expansion and Repositioning in Local Video Distribution Services Markets*

110. Local video distribution service markets are characterized by high barriers to entry. Providers seeking to expand their geographic reach or reposition themselves to offer such services in a particular area face high entry barriers as well.

111. In order to offer video distribution services, wireline and direct broadcast satellite providers must incur enormous upfront investment to construct a distribution infrastructure. Wireline distributors must construct network facilities that reach every home or business that they wish to serve. Likewise, satellite companies such as DIRECTV must launch satellites and deploy earth stations to receive signals from those satellites.

112. Providers may also need to obtain the proper regulatory authority prior to offering video distribution services. Wireline providers generally must obtain a franchise from local, municipal, or state authorities. Direct broadcast satellite providers must obtain approval from the FCC prior to operating the satellites and earth stations that comprise their networks.

113. Online video distributors represent the most likely prospect for successful and significant competitive entry, but they face significant barriers that limit their ability to compete with MVPDs in the short-to-medium term. One such barrier is the need to obtain access to a sufficient amount of content to become viable substitutes. Online video distributors generally offer less content than MVPDs and fewer live sports telecasts of local games. Due in part to these limitations, online video distributors account for only 5% of total video distribution service revenues.

*iv. DIRECTV, Cox, and AT&T Have Market Power in the Highly Concentrated Cox LA Service Area*

114. Consumers in the Cox service area faced limited choices for video distribution services in 2014. In many parts of this area, customers could access video distribution services from only three providers: Cox, DISH, or DIRECTV. In some areas within the Cox footprint, customers could also access video services from either AT&T or Verizon (but not both) where those

companies had upgraded their telephone networks to offer video service as a fourth alternative for consumers.

115. DIRECTV acted in concert with Cox and, therefore, it is appropriate to consider the combined market power of the two firms in the relevant geographic market. DIRECTV and Cox combined account for a greater than 70% share of the Cox local market. By acting in concert under these circumstances, DIRECTV and Cox had the ability to reduce output and product quality to subcompetitive levels.

116. DIRECTV also acted in concert with AT&T in Cox's service area. DIRECTV, Cox, and AT&T combined account for a greater than 75% share of the Cox local market. By acting in concert under these circumstances, the three companies had the ability to reduce output and product quality to subcompetitive levels.

*v. DIRECTV, Charter, and AT&T Have Market Power in the Highly Concentrated Charter LA Service Area*

117. Consumers in the Charter service area also faced limited choices for video distribution services in 2014. In many parts of the Charter service area, customers could access video services from only three providers: Charter, DISH, or DIRECTV. In some areas within the Charter footprint, customers could also access video services from either AT&T or Verizon (but not both) where those companies had upgraded their telephone networks to offer video service as a fourth alternative for consumers.

118. DIRECTV acted in concert with Charter and, therefore, it is appropriate to consider the combined market power of the two firms in the relevant geographic market. DIRECTV and Charter combined account for a greater than 50% share of the Charter local market. By acting in concert under these circumstances, DIRECTV and Charter had the ability to reduce output and product quality to subcompetitive levels.

119. DIRECTV also acted in concert with AT&T in Charter's service area. DIRECTV, Charter, and AT&T combined account for a greater than 55% share of the Charter local market. By acting in concert under these circumstances, DIRECTV, Charter, and AT&T had the ability to reduce output and product quality to subcompetitive levels.

**B. The Information Exchanges Orchestrated by DIRECTV Are of the Type That Is Likely to Harm Competition When Carried Out by Parties With Market Power**

120. The market for video distribution services in the LA area is highly concentrated. The local markets for video distribution services are characterized by high barriers to entry, just three to four entrenched competitors, and a history of interdependent price and output.

121. Competition is likely to be harmed when competitors with market power in concentrated markets, such as the markets at issue, directly exchange strategic information about current and forward-looking plans for product features on which they compete. Here, the information exchanged directly concerned the negotiating positions that were being taken by competitors leading up to and during their negotiations with a common programming supplier. That supplier had every legitimate reason to believe that the companies were viewing each other warily and calculating the risk that the other might move first.

122. The strategic information that DIRECTV exchanged with Cox, Charter, and AT&T was competitively sensitive and a material factor to their decisions not to carry the Dodgers Channel. Like price, content carriage—and particularly local sports content carriage—is a crucial aspect of competition between video programming distributors to attract and retain subscribers. Just as a subscriber might switch away from a distributor in order to obtain a lower price, a subscriber might switch away from a distributor in order to watch programming that the subscriber's current distributor does not offer. But if the subscriber has no alternative video programming distributor from which to obtain the desired content, the possibility that this subscriber might switch to a competitor is eliminated. When video distributors that are competing for the same subscribers exchange their strategic carriage plans, comfort replaces uncertainty and reduces their incentives to launch that content. After all, if no competitor offers particular content, there is no risk current subscribers would switch to a competitor in order to watch that content on another distributor's video service.

123. Information regarding sports content is particularly significant, as sports are an important aspect of the video distribution that customers in the LA region purchase. As noted above, DIRECTV has recognized that RSN

content is “some of the most popular and expensive in the market” and it has attempted to differentiate itself as “the undisputed leader in sports.”

124. The direct competitor communications at issue here took place between DIRECTV’s Chief Content Officer and his counterparts at Cox, Charter, and AT&T. These high-level executives had direct authority over their respective companies’ content carriage negotiations and significant influence over their companies’ content carriage decisions, thereby allowing them to act on the information that they learned and steer their companies’ decisions and negotiation strategies for the Dodgers Channel.

125. These direct communications took place in private settings and involved the exchange of confidential, non-public information. The information was at times exchanged in coded language intended to mask the content of the communications. In addition to the direct communications, DIRECTV executives consistently messaged DIRECTV’s opposition to carriage of the Dodgers Channel through the press.

### **C. DIRECTV’S Information Exchanges Corrupted the Competitive Process and Contributed to the Blackout of Dodgers Games**

126. The information sharing agreements that DIRECTV orchestrated with its direct competitors at Cox, Charter, and AT&T tainted the competitive process for carriage of the Dodgers Channel. They dampened the incentives of the companies to negotiate for and carry the Dodgers Channel, reduced their responsiveness to customer demand, and deprived LA area Dodgers fans of a competitive process that took into full account market demand for watching Dodgers games on television.

127. The information shared between DIRECTV and its competitors was a material factor in their decisions about whether and when to offer the Dodgers Channel in competition with one another.

128. During the Dodgers Channel carriage negotiations, DIRECTV learned valuable strategic information from Cox, Charter, and AT&T that reduced the uncertainty that DIRECTV should have faced from not knowing whether its subscribers would have the option of switching to these competitors in order to watch Dodgers games on television. This knowledge was a material factor in DIRECTV’s decision not to launch the Dodgers Channel. Mr. York testified that other MVPDs not appearing to be in any rush to do the Dodgers Channel deal

was a strategic consideration against DIRECTV doing the deal. Indeed, he edited a presentation given to DIRECTV’s CEO to make sure the presentation included that important factor. One of Mr. York’s subordinates testified that information about competitors’ plans could lead DIRECTV to be less aggressive in its proposals because the company would be “less inclined to engage more meaningfully if everybody was going to collectively sit on the sidelines.”

129. Cox, Charter, and AT&T each used strategic information obtained from DIRECTV to reduce the uncertainty that they each should have faced from not knowing whether their respective subscribers would be able to switch to DIRECTV in order to watch Dodgers games on television. This strategic information was a material factor in their decisions not to launch the Dodgers Channel. Thus, this knowledge tainted what should have been their independent decisions about whether to launch the Dodgers Channel.

130. Because the information sharing agreements made it less likely that DIRECTV and its major MVPD competitors would carry the Dodgers Channel, those agreements had the tendency to reduce the quality of the video distribution services DIRECTV, Cox, Charter, and AT&T provided in the LA area. They likewise had the tendency to reduce output by delaying the day when, if ever, the Dodgers Channel will be widely carried. These effects were ultimately felt throughout the Dodgers Channel broadcast territories where these companies offer service. The reduction in quality and output was felt acutely in the spring of 2014, when the actions of these MVPDs contributed to the Dodgers Channel not being carried during the first weeks of the new season, a time when DIRECTV believed ratings would peak. It continues to be felt by consumers today.

### **VI. DIRECTV’S UNLAWFUL INFORMATION EXCHANGES HAVE NO PROCOMPETITIVE JUSTIFICATION**

131. DIRECTV’s unlawful information exchanges with Cox, Charter, and AT&T were not reasonably necessary to further any procompetitive purpose. The information directly and privately shared between high-level executives was disaggregated, company specific, forward-looking, confidential, and related to a core characteristic of competition between them.

### **VII. VIOLATIONS ALLEGED**

#### **Count 1: DIRECTV Violated Section 1 of the Sherman Act by Entering Into an Unlawful Information Sharing Agreement with Cox**

132. DIRECTV and Cox have engaged in an information sharing agreement in unreasonable restraint of interstate trade and commerce, constituting a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue and recur unless the requested relief is granted.

133. This information exchange scheme consisted of an agreement between DIRECTV and Cox to share strategic information about their companies’ Dodgers Channel carriage negotiations and plans in order to limit the competitive pressure on either of them to carry the Dodgers Channel.

134. The information sharing agreement between DIRECTV and Cox has harmed competition. Their exchange of strategic information blunted the companies’ competitive incentives and corrupted the competitive process, which had the likely and foreseeable result of decreasing quality and reducing output by contributing to a blackout of the Dodgers Channel in part of the LA area.

#### **Count 2: DIRECTV Violated Section 1 of the Sherman Act by Entering Into an Unlawful Information Sharing Agreement with Charter**

135. DIRECTV and Charter have engaged in an information sharing agreement in unreasonable restraint of interstate trade and commerce, constituting a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue and recur unless the requested relief is granted.

136. The information exchange scheme consisted of an agreement between DIRECTV and Charter to share strategic information about their companies’ Dodgers Channel carriage negotiations and plans in order to limit the competitive pressure on either of them to carry the Dodgers Channel.

137. The information sharing agreement between DIRECTV and Charter has harmed competition. Their exchange of strategic information blunted the companies’ competitive incentives and corrupted the competitive process, which had the likely and foreseeable result of decreasing quality and reducing output by contributing to a blackout of the Dodgers Channel in part of the LA area.

**Count 3: DIRECTV Violated Section 1 of the Sherman Act by Entering Into an Unlawful Information Sharing Agreement with AT&T**

138. DIRECTV and AT&T have engaged in an information sharing agreement in unreasonable restraint of interstate trade and commerce, constituting a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

139. The information exchange scheme consisted of an agreement between DIRECTV and AT&T to share strategic information about their companies' Dodgers Channel carriage negotiations and plans in order to limit the competitive pressure on either of them to carry the Dodgers Channel.

140. The information sharing agreement between DIRECTV and AT&T has harmed competition. Their exchange of strategic information blunted the companies' competitive incentives and corrupted the competitive process, which had the likely and foreseeable result of decreasing quality and reducing output by contributing to a blackout of the Dodgers Channel in part of the LA area.

**VIII. REQUEST FOR RELIEF**

141. WHEREFORE, the United States requests that final judgment be entered against DIRECTV and AT&T declaring, ordering, and adjudging that:

a. The aforesaid bilateral information sharing agreements unreasonably restrain trade and are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. DIRECTV and AT&T be permanently enjoined from transmitting non-public information concerning DIRECTV's and/or AT&T's negotiating position, strategy, or tactics concerning potential agreements for video programming distribution with any other MVPD when DIRECTV and/or AT&T and another MVPD anticipate negotiating, or are negotiating, with a common programming provider, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

c. DIRECTV and AT&T be required to monitor communications or other contacts between, on the one hand, the executives involved in these unlawful information sharing agreements and others who may take their place in the future, and on the other hand, their horizontal competitors, and to periodically report the time, place, participants, and substance of any such communications to the Department of Justice;

d. DIRECTV and AT&T be required to implement training and compliance programs to instruct their executives

that exchanging non-public strategic information about competitive offerings with competitors when not necessary to further a procompetitive purpose is a violation of the antitrust laws and report on these programs to the Department of Justice; and

e. The United States be awarded its costs of this action and such other relief as may be appropriate and as the Court may deem just and proper, and such other relief as may be appropriate and as the Court may deem proper.

*/s/Jonathan Sallet*

---

JONATHAN SALLET,  
Deputy Assistant Attorney General for  
Litigation

*/s/Juan A. Arteaga*

---

JUAN A. ARTEAGA,  
Deputy Assistant Attorney General for  
Civil Enforcement

*/s/Patricia Brink*

---

PATRICIA BRINK,  
Director of Civil Enforcement

*/s/Scott Scheele*

---

SCOTT SCHEELE,  
Chief, Telecommunications & Media  
Enforcement Section

LAWRENCE FRANKEL,  
Assistant Chief

JARED HUGHES,  
Assistant Chief

*/s/Patricia C. Corcoran*

---

PATRICIA CORCORAN  
CORY BRADER  
DYLAN CARSON  
PETER GRAY  
DANIEL HAAR  
MATTHEW JONES  
JONATHAN JUSTL  
DAVID LAWRENCE  
ANNA SALLSTROM  
KRISTINA SRICA

Attorneys for the United States  
U.S. Department of Justice  
Antitrust Division  
450 5th Street N.W.

Washington, D.C. 20001

Telephone: 202-598-2529

Facsimile: 202-514-6381

E-mail: [patricia.corcoran@usdoj.gov](mailto:patricia.corcoran@usdoj.gov)

Dated: November 2, 2016

FOR PLAINTIFF UNITED STATES OF  
AMERICA:

FREDERICK S. YOUNG (DC Bar No.  
421285)

*frederick.young@usdoj.gov*

CORY BRADER (NY Bar No. 5118732)  
*cory.brader@usdoj.gov*

U.S. DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION

450 5th Street N.W.  
Washington, D.C. 20530  
Telephone: 202-307-2869  
Facsimile: 202-514-6381

Counsel for Plaintiff,  
UNITED STATES OF AMERICA

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF  
CALIFORNIA WESTERN DIVISION**

UNITED STATES OF AMERICA,  
Plaintiff, v. DIRECTV GROUP  
HOLDINGS, LLC, et al., Defendants.

Case No. 2:16-cv-08150-MWF-E  
COMPETITIVE IMPACT STATEMENT  
Hon. Michael W. Fitzgerald

Plaintiff United States of America  
("United States"), pursuant to the  
Antitrust Procedures and Penalties Act  
("APPA" or "Tunney Act"), 15 U.S.C.  
§ 16(b)-(h), files this Competitive  
Impact Statement relating to the  
proposed Final Judgment against  
Defendants DIRECTV Group Holdings,  
LLC ("DIRECTV") and its corporate  
successor AT&T, Inc. ("AT&T")  
submitted for entry in this civil antitrust  
proceeding.

**I. NATURE AND PURPOSE OF THE  
PROCEEDING**

On November 2, 2016, the United States filed a civil antitrust Complaint alleging that DIRECTV acted as the ringleader of a series of unlawful information exchanges between DIRECTV and three of its competitors—Cox Communications, Inc., Charter Communications, Inc. and AT&T (prior to its 2015 acquisition of DIRECTV)—during the companies' parallel negotiations to carry SportsNet LA, which holds the exclusive rights to telecast almost all live Dodgers games in the Los Angeles area. The Complaint alleges that DIRECTV unlawfully exchanged competitively sensitive information with Cox, Charter and AT&T during the companies' negotiations for the right to telecast SportsNet LA (the "Dodgers Channel").

Specifically, the Complaint alleges that DIRECTV and each of these competitors agreed to and did exchange non-public information about their companies' ongoing negotiations to telecast the Dodgers Channel, as well as their companies' future plans to carry—or not carry—the channel. The Complaint also alleges that each company engaged in this conduct in order to obtain bargaining leverage and reduce the risk that the company's rival would choose to carry the Dodgers Channel (while the company did not), resulting in a loss of subscribers to that rival. The Complaint further alleges that the information learned through these

unlawful agreements was a material factor in the companies' decisions not to carry the Dodgers Channel, harming the competitive process for carriage of the Dodgers Channel and making it less likely that any of these companies would reach a deal because they no longer had to fear that a decision to refrain from carriage would result in subscribers switching to a competitor that offered the channel.

The Complaint alleges that these agreements amounted to a restraint of trade in violation of Section 1 of the Sherman Act, which outlaws "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States." 15 U.S.C. § 1. The Complaint seeks injunctive relief to prevent DIRECTV and AT&T from sharing non-public information with any other multichannel video programming distributor ("MVPD")<sup>7</sup> about Defendants' negotiating position, strategy, or tactics concerning potential agreements for video programming distribution.

The Defendants filed a motion to dismiss the Complaint for failure to state a claim on January 10, 2017 (ECF No. 16), and the United States filed its corrected memorandum in opposition to that motion on February 8, 2017 (ECF No. 23). The Defendants filed their reply brief in support of their motion on February 21, 2017 (ECF No. 24), and the motion was due to be argued at a hearing set for March 13, 2017 (ECF No. 18). Prior to the hearing, the United States and the Defendants filed a stipulation seeking a two-week continuance of the motion hearing because the parties were engaged in productive settlement negotiations (ECF No. 27), and the Court granted the requested continuance (ECF No. 28).

The United States today filed a Stipulation and Order and proposed Final Judgment which would remedy the violation alleged in the Complaint by prohibiting Defendants from sharing or seeking to share competitively sensitive information with any MVPD. Such information includes without limitation non-public information relating to negotiating position, tactics or strategy, video programming carriage plans, pricing or pricing strategies, costs, revenues, profits, margins, output, marketing, advertising, promotion, or research and development.

<sup>7</sup> MVPD is an industry acronym standing for multichannel video programming distributor, and it applies to a variety of providers of pay television services, including satellite companies (such as DIRECTV and DISH Network), cable companies (such as Cox and Charter), and telephone companies (such as AT&T and Verizon).

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

## II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

### A. Defendants and the Parties to the Alleged Agreements

Defendant DIRECTV is a Delaware corporation with headquarters located in El Segundo, California, offering direct broadcast satellite television service nationwide. As of 2014, DIRECTV was the second largest MVPD in the United States, selling subscriptions to pay television services to approximately 20 million consumers. As of 2014, DIRECTV had approximately 1.25 million video subscribers in the Los Angeles area. In 2015, Defendant AT&T acquired DIRECTV in a transaction valued at approximately \$49 billion. Following that acquisition, AT&T is now the largest pay television provider in the United States with more than 25 million video subscribers nationwide.

Cox Communications ("Cox") is a privately held Delaware corporation with its headquarters in Atlanta, Georgia. Cox is currently the third-largest cable provider in the United States. As of 2014, Cox was the fourth-largest cable provider in the United States and had approximately 500,000 subscribers in the Los Angeles area.

In 2014, Charter Communications ("Charter") was the third-largest cable company in the United States and had approximately 270,000 subscribers in the Los Angeles area. In 2016, Charter merged with Time Warner Cable ("TWC"), which owns the rights to the Dodgers Channel. As of 2014, TWC was the second-largest cable company in the United States with approximately 1.3 million subscribers in the Los Angeles area.

AT&T, a Delaware corporation with headquarters located in Dallas, Texas, is a defendant in this action as the corporate successor to DIRECTV. AT&T is a multinational telecommunications company offering mobile telephone service, wireline Internet and television service, and satellite television service through its 2015 acquisition of DIRECTV. AT&T offers wireline television service through its U-verse video product, which distributes video

content using AT&T's telecommunications infrastructure. As of 2014, AT&T had approximately 400,000 U-Verse video subscribers in the Los Angeles area.

In early 2013, TWC announced that it had partnered with the Los Angeles Dodgers to acquire the exclusive rights to telecast almost all live Dodgers games in the Los Angeles area. The Dodgers Channel was set to launch at the beginning of the 2014 baseball season. TWC approached MVPDs in Los Angeles—including DIRECTV, Cox, Charter and AT&T—and attempted to negotiate agreements for carriage of the Dodgers Channel. TWC failed to reach agreement with any other MVPD. Currently, apart from TWC itself (and Charter following its 2015 agreement to acquire TWC), no MVPD in the Los Angeles area carries the Dodgers Channel, leaving hundreds of thousands of area consumers without access to live telecasts of Dodgers games.

### B. The Relevant Markets and Market Power

MVPDs acquire the rights to transmit content from video programmers and then distribute that content to subscribers who pay for the service. MVPDs compete with each other to attract and retain paying subscribers, both through the prices they charge and the programming content they offer. The Complaint alleges that the distribution of professional video programming services to residential or business customers is a relevant product market in which to evaluate the effects of the alleged antitrust violations.

MVPDs particularly depend on sports content as a way to distinguish themselves from their competitors. For example, DIRECTV refers to itself as the "undisputed leader" for sports content and spends over \$1 billion annually to obtain the exclusive rights to provide its Sunday Ticket package of live National Football League games. MVPDs also consider offering local, live sports content to be a crucial component of competition between them. Telecasts of local sports games are often available only through a regional sports network ("RSN"), like the Dodgers Channel. DIRECTV has publicly highlighted the popularity of RSNs and considers offering RSN content to be essential to its ability to compete. Similarly, MVPDs will purchase the right to telecast certain sports events and create an RSN to carry the telecasts, as TWC did with the Dodgers Channel. Residential and business consumers in the Los Angeles area can only watch Dodgers telecasts by subscribing to a video distribution

service that carries the Dodgers Channel.

The Complaint alleges that Cox's and Charter's Los Angeles service areas are relevant geographic markets in which to evaluate the effects of the alleged antitrust violations. The availability of video distribution services is controlled by which MVPDs offer services to a given location. In the Los Angeles area in 2014, the market for purchasing video distribution services was highly concentrated and consumers could choose from only a handful of providers. Direct broadcast satellite providers, like DIRECTV, can serve customers almost anywhere in the United States. But wireline video distributors, including cable companies like Cox and Charter and telephone companies like AT&T, serve only geographic areas where they have installed infrastructure that reaches a consumer's home or business.

Consumers thus can purchase video distribution services only from those providers that offer services to their location. In 2014, only three cable companies—TWC, Charter, and Cox—offered video distribution services to a significant portion of the Los Angeles area.<sup>8</sup> Their service areas did not overlap.

The Complaint alleges that the relevant market is represented by the competitive choices for video distribution services faced by a consumer at a given location. For ease of analysis, these markets can be aggregated to geographic areas where consumers face similar competitive choices. In the Cox and Charter areas, many consumers could access video programming services only from the cable provider (Cox or Charter) or one of the two satellite providers, DIRECTV and DISH Network. In some areas within these footprints, consumers could choose from four MVPD providers because they could also access video services from either AT&T or Verizon (but not both). The Complaint alleges that these markets are highly concentrated and that, by acting in concert, DIRECTV, Charter, Cox, and AT&T had market power in these geographic markets.

<sup>8</sup>Mediacom and Suddenlink also operated small service areas in the LA area, although neither had more than 5,000 subscribers and neither was competitively significant. Champion Broadband reached a deal to carry the Dodgers Channel in 2014, but had only about 3,000 video subscribers in Arcadia and Monrovia, California, and has since gone out of business.

### *C. The Alleged Agreements To Share Information*

As detailed in the Complaint, during the negotiations with TWC regarding carriage of the Dodgers Channel, DIRECTV orchestrated a series of agreements with Cox, Charter and AT&T to exchange competitively sensitive, forward-looking, strategic information about whether or not they would carry the Dodgers Channel. DIRECTV competes with every other MVPD in the Los Angeles area, making it the natural ringleader of these anticompetitive agreements. By contrast, cable companies serve discrete geographic areas and do not compete with each other for subscribers. Likewise, legacy telephone companies also serve limited territories and compete with the cable companies but not with each other. This meant that if DIRECTV did not carry the Dodgers Channel, it risked losing subscribers to any MVPD in the Los Angeles area that chose to carry the channel. If DIRECTV chose to carry the Dodgers Channel, it stood to gain subscribers from any MVPD that did not. Cox, Charter, and AT&T understood that if DIRECTV decided to carry the Dodgers Channel, competitive pressure could force them to carry it too. DIRECTV also recognized that it would lose leverage with TWC and risk losing subscribers each time any other MVPD chose to carry the channel.

In January 2013, TWC acquired the rights to telecast Dodgers games starting with the 2014 season. DIRECTV, Cox, Charter, and AT&T formed their strategies for the channel in fall 2013, and negotiations with TWC began in January 2014 and continued past the start of the 2014 Major League Baseball season in the Spring. Throughout this period, Dan York—DIRECTV's Chief Content Officer—exchanged strategic information about the Dodgers Channel with rival executives at Cox, Charter, and AT&T.<sup>9</sup> All told, during the period when each MVPD formed its strategy and negotiated for the Dodgers Channel, Mr. York and his rival executives had over 30 communications, some of which explicitly related to carriage plans and some of which coincided with key moments in each companies' negotiations.

For example, Mr. York agreed with his Cox rival to give each other a "heads-up" "before it was public knowledge" if either company was

<sup>9</sup>The Complaint alleges that Mr. York's agreements to exchange confidential information about content negotiations went further than just those about the Dodgers Channel, as Mr. York and his counterpart at Charter also agreed to exchange competitively sensitive information about non-sports programming deals.

going to launch the channel. On another occasion, Mr. York offered to give Cox advance notice before DIRECTV signed a Dodgers Channel deal so that Cox could choose to sign first. Mr. York told his competitor this would help Cox "protect any MFN terms"—that is, it would enable Cox to sign a contract with a most favored nation term and thereby gain the benefit of any better bargain DIRECTV subsequently could extract from TWC due to its larger size. In making this offer, Mr. York was likely sacrificing the benefits of the better deal he could negotiate because of DIRECTV's size and undercutting DIRECTV's claim to be the "undisputed leader" for sports content.

Mr. York and Charter's senior content executive also discussed their respective Dodgers Channel negotiations while they were ongoing. Charter's executive and Mr. York discussed "the high price" that TWC had paid for the Dodgers Channel and the "outrageous" price that TWC "was demanding for carriage." Charter's executive spoke to Mr. York the day before recommending to his CEO that Charter wait for DIRECTV to launch, and he relied on his knowledge of DIRECTV's plans, telling a colleague "I think Direct will not be there at launch." The Charter executive tried to speak with Mr. York again the day Charter set its content budget for the 2014 fiscal year. The two executives checked in after each company had received TWC's offer, and as negotiations continued, the Charter executive maintained to TWC that Charter would not carry the channel unless DIRECTV launched first.

Mr. York also agreed to exchange competitively sensitive Dodgers Channel information with the senior content executive at AT&T. Mr. York and the AT&T executive exchanged text messages that discussed the price of the Dodgers Channel. After the AT&T executive sent Mr. York a coded text message with Time Warner Cable's latest asking price, Mr. York responded by suggesting that he would not want AT&T to accept that offer. The AT&T executive tried to contact Mr. York the same day the AT&T executive recommended that AT&T adopt a Dodgers strategy that depended on DIRECTV. The AT&T executive continued to reach out, leaving Mr. York a voicemail asking to catch up on "three things . . . two sports and one news." The two connected over the phone the day before the AT&T executive met with AT&T's CEO and recommended that AT&T not carry the channel.

The Complaint alleges that Mr. York instigated and continued these information exchanges with his

counterparts at rival MVPDs in order to benefit DIRECTV's own Dodgers Channel negotiations. In a two-hour span the day after DIRECTV received TWC's first Dodgers Channel offer, Mr. York spoke or attempted to speak with all three of his co-conspirators, ultimately connecting with each of them. After those conversations, Mr. York informed DIRECTV's CEO that none of DIRECTV's competitors "appear[ed] in a rush to do a deal" with TWC for the Dodgers Channel, even though it was early in the negotiations and none of the distributors had made public statements about their plans. In April 2014, DIRECTV received an anonymous complaint that Mr. York had been speaking with competitors "about NOT carrying the Dodgers on DIRECTV." In May 2014, DIRECTV CEO Mike White told investors that distributors were "start[ing] to stand together, like most of us have been doing in Los Angeles for the first time ever, by the way, with the Dodgers on outrageous increases and excesses." With uncertainty reduced, the co-conspirators could comfortably resist TWC's offers to carry the Dodgers.

#### *D. Anticompetitive Effects of the Alleged Information-Sharing Agreements*

The Complaint alleges that DIRECTV's information-sharing agreements with its direct competitors at Cox, Charter, and AT&T harmed competition by making it less likely each competitor would carry the Dodgers Channel and by disrupting the competitive process. These agreements dampened the incentives of the companies to negotiate for and carry the Dodgers Channel, reduced their responsiveness to customer demand, and deprived Los Angeles area Dodgers fans of a competitive process that took into full account market demand for watching Dodgers games on television. The harm to competition and consumers stems from the basic principle that an MVPD need not worry about losing subscribers to a competitor over content if it has learned the competitor will not carry that content.

The sharing of competitively sensitive information among direct competitors made it less likely that any of the MVPDs would reach a deal for the Dodgers Channel because it increased their confidence that a decision to refrain from carriage would not result in subscribers switching to a competitor that offered the channel. The reduction of this uncertainty was valuable because each company identified a competitor's decision to telecast the Dodgers Channel as a significant development that could force it to reach a deal with TWC.

Indeed, the information shared between DIRECTV and its competitors was a material factor in their decisions not to launch the Dodgers Channel. These unlawful exchanges were intended to reduce—and did reduce—each rival's uncertainty about whether competitors would carry the Dodgers Channel, thereby providing DIRECTV and its competitors artificially enhanced bargaining leverage.

Because the information sharing agreements made it less likely that DIRECTV and its major MVPD competitors would carry the Dodgers Channel, those agreements had the tendency to reduce the quality of the co-conspirator video distribution services in the Los Angeles area and to reduce output by delaying the day when, if ever, the Dodgers Channel will be widely carried. These effects were ultimately felt throughout the Dodgers Channel broadcast territories where these companies offer service. DIRECTV's unlawful information exchanges harmed consumers by making it less likely that they would be able to watch Dodgers games on television, and this harm continues to be felt by consumers today. DIRECTV's unlawful information exchanges also harmed competition by corrupting the competitive process that should have resulted in each company making an independent decision on whether to carry the Dodgers Channel, subject to competitive pressures arising from independent decisions made by other, overlapping MVPDs.

DIRECTV's three bilateral agreements to share forward-looking strategic information concerning carriage of the Dodgers Channel lacked any countervailing procompetitive benefits and were not reasonably necessary to further any legitimate business purpose. The information directly and privately shared between high-level executives was disaggregated, company specific, forward-looking, confidential, and related to a core characteristic of competition between them.

### **III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT**

The terms of the proposed Final Judgment closely track the relief sought in the Complaint and are intended to provide prompt, certain and effective remedies that will ensure that Defendants and their executives will not impede competition by sharing competitively sensitive information with their counterparts at rival MVPDs. The requirements and prohibitions provided for in the proposed Final Judgment will terminate Defendants' illegal conduct, prevent recurrence of

the same or similar conduct, and ensure that Defendants establish a robust antitrust compliance program. The proposed Final Judgment protects consumers by putting a stop to the anticompetitive information sharing alleged in the Complaint, while permitting certain potentially beneficial collaborations and transactions as detailed below.

The proposed Final Judgment does not and is not intended to compel any MVPD to reach an agreement to carry any particular video programming, including the Dodgers Channel. Negotiations between video programmers and MVPDs are often contentious, high-stakes undertakings where one or both sides threatens to walk away, or even temporarily terminates the relationship (sometimes called a "blackout" or "going dark") in order to secure a better deal. The proposed Final Judgment is not intended to address such negotiating tactics, or to impose any agreement upon TWC, which owns rights to the Dodgers Channel, or any MVPD that is not the result of an unfettered negotiation in the marketplace. Rather, the Final Judgment is intended to prevent the competitive process for acquiring video programming from being corrupted by improper information sharing among rivals and to prevent harm to consumers when such collusion taints that competitive process and makes carriage on competitive terms less likely.

#### *A. Prohibited Conduct*

The proposed Final Judgment broadly prohibits Defendants from sharing strategic competitive information with direct competitors and thus protects the competitive process for negotiating video programming. Specifically, Section IV ensures that Defendants will not, directly or indirectly, communicate a broad array of competitively sensitive, non-public strategic information (such as negotiating strategy, carriage plans or pricing) to any MVPD, and will not request such information from any MVPD, and will not encourage or facilitate the communication of such information from any MVPD.

#### *B. Permitted Conduct*

Section IV makes clear that the proposed Final Judgment does not prohibit Defendants from sharing or receiving competitively sensitive strategic information in certain specified circumstances where the information sharing appears unlikely to cause harm to competition.

Section IV(D) allows the communication of competitively

sensitive information with rival MVPDs when counsel and the Antitrust Compliance Officer required by Section V of the proposed Final Judgment (see Paragraph IV.C., below) determine that such communication is reasonably related to a lawful purpose, such as a lawful joint venture, due diligence for a potential transaction, or enforcement of a most-favored-nation term.

Section IV(E) permits the communication of competitively sensitive information pursuant to negotiations with another MVPD to sell video programming to that MVPD, or to buy video programming from it.

Likewise, Section IV(F) permits Defendants to communicate competitively sensitive information with video programmers, including those affiliated with MVPDs, so long as the information pertains only to the potential or actual carriage of the programmer's content by Defendants.

Section IV(G) permits Defendants to respond to news media questions about programming distribution and carriage negotiations, provided Defendants' negotiating strategy is not disclosed.

Finally, Section IV(H) confirms that the proposed Final Judgment does not prohibit petitioning conduct protected by the Noerr-Pennington doctrine.

#### C. Antitrust Compliance Obligations

As outlined in Section V, Defendants must designate an Antitrust Compliance Officer, who is responsible for implementing training and antitrust compliance programs and achieving full compliance with the Final Judgment. Among other duties, the Antitrust Compliance Officer will be required to distribute copies of the Final Judgment; ensure training related to the Final Judgment and the antitrust laws is provided to Defendants' directors, officers, and certain other executives; certify annual compliance with the Final Judgment; and maintain and submit periodically a log of all communications relating to competitively sensitive information between Defendants' covered executives and employees of other MVPDs. The Defendants are subject to these compliance obligations for the five-year term of the proposed Final Judgment. This compliance program is necessary considering the extensive communications among rival executives that facilitated Defendants' agreements.

#### IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws

may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

#### V. PROCEDURES AVAILABLE FOR APPROVAL OR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Scott A. Scheele, Chief,  
Telecommunications and Media  
Enforcement Section Antitrust  
Division, United States Department of  
Justice, 450 Fifth Street, N.W., Suite  
7000, Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

#### VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, seeking injunctive relief against Defendants' conduct through a full trial on the merits. The United States is satisfied, however, that the relief in the proposed Final Judgment will terminate the anticompetitive conduct alleged in the Complaint and prevent its recurrence, preserving competition for the acquisition and carriage of video programming in the United States. Thus, the proposed Final Judgment would protect competition as effectively as would any remedy available through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

#### VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). "The APPA was enacted in 1974 to preserve the integrity of and public confidence in procedures relating to settlements via consent decree procedures." *United States v. BNS Inc.*, 858 F.2d 456, 459 (9th Cir. 1988) (noting that the APPA "mandates public notice of a proposed consent decree, a competitive impact statement by the government, a sixty-day period for written public comments, and published responses to the comments" (citations omitted)). In making that "public interest" determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint

including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08–1965, 2009 U.S. Dist. LEXIS 84787, at \*3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").<sup>10</sup>

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *Microsoft*, 56 F.3d at 1458–62; see also *BNS*, 858 F.2d at 462–63 ("[T]he APPA does not authorize a district court to base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint."); *United States v. Nat'l Broad. Co.*, 449 F. Supp. 1127, 1144 (C.D. Cal. 1978) ("[I]n evaluating a proposed consent decree, one highly significant factor is the degree to which the proposed decree advances and is consistent with the government's original prayer for relief." (citation omitted)). With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief

would best serve the public." *BNS*, 858 F.2d at 462 (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1458–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*3. As the Ninth Circuit has explained: [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. See *United States v. Nat'l Broad. Co.*, 449 F. Supp. 1127 (C.D. Cal. 1978). The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (additional citations omitted).<sup>11</sup> In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; see also *U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees

than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); see also *U.S. Airways*, 38 F. Supp. 3d at 75 (noting that "room must be made for the government to grant concessions in the negotiation process for settlements" (quoting *SBC Commc'ns*, 489 F. Supp. 2d at 1461) (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17 (citation omitted).

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; see also *U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself" and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to

<sup>10</sup> The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also *SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

<sup>11</sup> Cf. *BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *Nat'l Broad. Co.*, 449 F. Supp. at 1142 (under the APPA, "a court's power to do very much about the terms of a particular decree, even after it has given the decree maximum, rather than minimum, judicial scrutiny, is a decidedly limited power" (citation omitted)); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). See generally *Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.<sup>12</sup>

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11. “A court can make its public interest determination based on the competitive impact statement and response to public comments alone.” *U.S. Airways*, 38 F. Supp. 3d at 76 (citation omitted).

### VIII. DETERMINATIVE DOCUMENTS

No determinative documents or material within the meaning of the APPA were considered by the Department in formulating the proposed Final Judgment.

This document will also be made available on the Antitrust Division’s website at <https://www.justice.gov/atr/case/us-v-directv-group-holdings-llc-and-att-inc>.

<sup>12</sup> *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, No. 73–CV–681–W–1, 1977 U.S. Dist. LEXIS 15858, at \*22 (W.D. Mo. May 17, 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93–298, at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

Dated: March 23, 2017

Respectfully submitted,  
PLAINTIFF

UNITED STATES OF AMERICA

By: /s/FREDERICK S. YOUNG

FREDERICK S. YOUNG

CORY BRADER

DYLAN M. CARSON

PATRICIA CORCORAN

MATTHEW JONES

DAVID LAWRENCE

LAWRENCE A. REICHER

ANNA SALLSTROM

SEAN SANDOLOSKI

CURTIS STRONG

Attorneys for the United States

U.S. Department of Justice

Antitrust Division

450 5th Street N.W.

Washington, D.C. 20530

Telephone: 202–307–2869

Facsimile: 202–514–6381

Email: frederick.young@usdoj.gov

### ATTACHMENT A

FREDERICK S. YOUNG (DC Bar No. 421285)

[frederick.young@usdoj.gov](mailto:frederick.young@usdoj.gov)

CORY BRADER (NY Bar No. 5118732)

[cory.brader@usdoj.gov](mailto:cory.brader@usdoj.gov)

U.S. DEPARTMENT OF JUSTICE

ANTITRUST DIVISION

450 5th Street N.W.

Washington, D.C. 20530

Telephone: 202–307–2869

Facsimile: 202–514–6381

Counsel for Plaintiff,

UNITED STATES OF AMERICA

### UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, v. DIRECTV GROUP

HOLDINGS, LLC, et al., Defendants.

Case No. 2:16–cv–08150–MWF–E

PROPOSED FINAL JUDGMENT

Hon. Michael W. Fitzgerald

WHEREAS, Plaintiff, United States of America, filed its Complaint on November 2, 2016, alleging Defendants’ violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Plaintiff and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prohibition of

certain alleged information sharing between Defendants and their competitors;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

### I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of and the parties to this action. Venue is proper in the Central District of California. For the purposes of this Final Judgment only, Defendants stipulate that the Complaint states a claim upon which relief may be granted against Defendants under Section 1 of the Sherman Act (15 U.S.C. § 1).

### II. DEFINITIONS

A. “AT&T” means AT&T, Inc., a Delaware corporation with its headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Communicate,” “Communicating,” and “Communication” means any transfer or dissemination of information, whether directly or indirectly, and regardless of the means by which it is accomplished, including without limitation orally or by printed or electronic means.

C. “Competitively Sensitive Information” means any non-public information of Defendants or any competing MVPD relating to Video Programming distribution services in the United States, including without limitation non-public information relating to negotiating position, tactics or strategy, Video Programming carriage plans, pricing or pricing strategies, costs, revenues, profits, margins, output, marketing, advertising, promotion, or research and development.

D. “Defendants” means DIRECTV and AT&T.

E. “DIRECTV” means DIRECTV Group Holdings, LLC, a Delaware corporation with its headquarters in El Segundo, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. “MFN Clause” means a contractual provision that entitles an MVPD to modify a programming agreement to incorporate more favorable rates, contract terms, or conditions that the Video Programmer agrees to with another MVPD.

G. “MVPD” means a multichannel video programming distributor as that

term is defined on the date of entry of this Final Judgment in 47 C.F.R. § 76.1200(b).

H. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

I. "Video Programmer" means any Person that provides Video Programming for distribution through MVPDs.

J. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station or cable network, regardless of the medium or method used for distribution.

### III. APPLICABILITY

This Final Judgment applies to Defendants, as defined above, and all other Persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

### IV. PROHIBITED CONDUCT

Defendants shall not, directly or indirectly:

- A. Communicate Competitively Sensitive Information to any MVPD;
- B. Request Competitively Sensitive Information from any MVPD; or
- C. Encourage or facilitate the Communication of Competitively Sensitive Information to or from any MVPD.

Notwithstanding the foregoing, nothing in this Final Judgment shall prohibit Defendants from:

- D. After securing advice of counsel and in consultation with the Antitrust Compliance Officer, Communicating Competitively Sensitive Information to or requesting Competitively Sensitive Information from any MVPD when such communication is reasonably related to a lawful purpose, such as a lawful joint venture or legally supervised due diligence for a potential transaction, or the enforcement of MFN clauses;
- E. Communicating Competitively Sensitive Information to or requesting Competitively Sensitive Information from an MVPD if such Competitively Sensitive Information pertains only to either (a) Defendants' supply of Video Programming to that MVPD, or (b) that MVPD's carriage or potential carriage of Defendants' Video Programming;
- F. Communicating Competitively Sensitive Information to or requesting Competitively Sensitive Information from a Video Programmer, including

one affiliated with an MVPD, if such Competitively Sensitive Information pertains only to either (a) that Video Programmer's supply of Video Programming to Defendants, or (b) Defendants' carriage or potential carriage of that Video Programmer's Video Programming;

G. Responding to any question from any news organization related to the distribution of Video Programming or to any actual or proposed transaction with any MVPD, provided that response does not disclose Defendants' negotiation strategy; or

H. After securing advice of counsel and in consultation with the Antitrust Compliance Officer, engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

### V. COMPLIANCE PROGRAM

A. Defendants shall implement a training and antitrust compliance program to instruct their executives and employees responsible for, or participating in, content carriage negotiations that Communicating Competitively Sensitive Information with competing MVPDs when not reasonably related to a lawful purpose may be a violation of the antitrust laws. This compliance program shall include designating, within thirty (30) days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the training and antitrust compliance program and achieving full compliance with this Final Judgment.

B. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

- 1. Distributing, within thirty (30) days from the effective date hereof, a copy of this Final Judgment to (i) each of the officers of Defendants who has duties or responsibilities related to the acquisition of Video Programming or to Video Programming carriage plans and decisions; (ii) each of the other employees and agents of Defendants who has duties or responsibilities related to the acquisition of Video Programming or to Video Programming carriage plans and decisions; and (iii) each of the other employees or agents of Defendants who has duties or responsibilities related to reviewing any submissions to Defendants' ethics portal or to any other anonymous suggestion or complaint vehicle available to Defendants' employees or agents.
- 2. Distributing within thirty (30) days a copy of this Final Judgment to any

person who succeeds to a position described in Section V(B)(1).

3. Briefing annually those persons identified in Sections V(B)(1) and (2) on the meaning and requirements of this Final Judgment and of the antitrust laws, and advising them that Defendants' legal advisors are available to confer with them regarding compliance with both the Final Judgment and the antitrust laws.

4. Obtaining from each person identified in Sections V(B)(1) and (2) an annual written certification that he or she: (i) has read, understands, and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of this Final Judgment that has not been reported to the Antitrust Compliance Officer; (iii) has been advised and understands that his or her failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against Defendants or any other person who violates this Final Judgment; and (iv) has maintained and submitted a record of all Communications of Competitively Sensitive Information with any MVPD, other than those consistent with Sections IV(D), (E), (F), (G) and (H).

5. Maintaining (i) a record of all certifications received pursuant to Section V(B)(4); (ii) a file of all documents in existence at the commencement of and related to any investigation by the Antitrust Compliance Officer of any alleged violation of this Final Judgment; and (iii) a record of all communications generated after the commencement of any such investigation and related to any such alleged violation, which shall identify the date and place of the communication, the persons involved, the subject matter of the communication, and the results of any related investigation.

6. Maintaining, and furnishing to the United States, on a quarterly basis for the first year and annually thereafter, a log of all Communications, between or among any person identified in Sections V(B)(1) and (2) and any person employed by or associated with any other MVPD, relating, in whole or in part, to Competitively Sensitive Information, excluding those communications consistent with Sections IV(D), (E), (F), (G) and (H). The log shall include but not be limited to an identification (by name, employer and job title) of all participants in the communication; the date, time, and duration of the communication; the medium of the communication; and a description of the subject matter of the communication.

C. If Defendants' Antitrust Compliance Officer learns of any allegations of a violation of any of the terms and conditions contained in this Final Judgment, Defendants shall immediately investigate to determine if a violation has occurred and appropriate action is required to comply with this Final Judgment. If Defendants' Antitrust Compliance Officer learns of any violation of any of the terms and conditions contained in this Final Judgment, Defendants shall immediately take appropriate action to terminate or modify the activity so as to comply with this Final Judgment. Defendants shall report any such investigation or action in the annual compliance statement required by Section VI(B).

D. If Defendants' Antitrust Compliance Officer learns any Competitively Sensitive Information has been communicated from an MVPD to any person identified in Sections V(B)(1) and (2), excluding those communications consistent with Sections IV(D), (E), (F), (G) and (H), the Antitrust Compliance Officer shall instruct that person that he or she must not consider the Competitively Sensitive Information in any way, shall advise counsel for the MVPD which communicated the Competitively Sensitive Information that such information must not be communicated to Defendants, and report the circumstances of the Communication of the Competitively Sensitive Information and the response by the Antitrust Compliance Officer in the annual compliance statement required by Section VI(B).

#### VI. CERTIFICATION

A. Within sixty (60) days after entry of this Final Judgment, Defendants shall certify to Plaintiff whether they have designated an Antitrust Compliance Officer and have distributed the Final Judgment in accordance with Section V(B) above. This certification shall include the name, title, business address, email address, and business phone number of the Person designated as Antitrust Compliance Officer.

B. For the term of this Final Judgment, on or before its anniversary date, Defendants shall file with the Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Section V, including the record(s) created in accordance with Section V(B)(4) above.

#### VII. COMPLIANCE INSPECTION

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified

or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. access during Defendants' office hours to inspect and copy, or at the United States' option, to require Defendants and their members to provide copies of all books, ledgers, accounts, records, and documents in their possession, custody, or control, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or other representatives, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports and interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### VIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### IX. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire five (5) years from its date of entry.

#### X. PUBLIC INTEREST DETERMINATION

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

SO ORDERED:

Dated: 2017

Michael W. Fitzgerald

United States District Judge

[FR Doc. 2017-07463 Filed 4-12-17; 8:45 am]

BILLING CODE P

#### DEPARTMENT OF JUSTICE

[Docket No. OLP 160]

#### Notice of Public Comment Period on Advancing Forensic Science

**AGENCY:** Department of Justice.

**ACTION:** Request for public comment.

**SUMMARY:** It is the Department's mission to ensure public safety and provide federal leadership in preventing and controlling crime. Advancing the practice of forensic science is an important part of that effort. The more effective a forensic system we have, the better equipped we are to solve crimes, more swiftly absolving the innocent and bringing the guilty to justice. The second term of the National Commission on Forensic Science (NCFS) is set to expire on April 23, 2017. As part of the Department's continued efforts to advance the practice of forensic science following NCFS's expiration, the Department is seeking comment on how the

Department should move forward to evaluate and improve the underlying science of forensic evidence; improve the operational management systems of forensic science service providers; and improve the understanding of forensic science by legal practitioners.

**DATES:** Written public comment regarding the issue for comment should be submitted through [www.regulations.gov](http://www.regulations.gov) before June 9, 2017.

**FOR FURTHER INFORMATION CONTACT:** The Office of Legal Policy, 950 Pennsylvania Avenue NW., Washington, DC 20530, by phone at 202-514-4601 or via email at [Forensics.OLP@usdoj.gov](mailto:Forensics.OLP@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** In February 2013, the U.S. Department of Justice and the National Institute of Standards and Technology (NIST) announced a partnership that included the formation of the National Commission on Forensic Science (NCFS). The NCFS is one of several federal initiatives relating to forensic science that was created following the 2009 report by the National Academy of Sciences National Research Council on “Strengthening Forensic Science in the United States: A Path Forward.” NCFS was established under the Federal Advisory Committee Act to provide advice and recommendations to the Attorney General on: (1) Strengthening the reliability and usefulness of the forensic sciences (including medicolegal death investigation); (2) enhancing quality assurance and quality control in forensic science laboratories and units; (3) identifying and recommending scientific guidance and protocols for evidence seizure, testing, analysis, and reporting by forensic science laboratories and units; and (4) identifying and assessing other needs of the forensic science communities to strengthen their disciplines and meet the increasing demands generated by the criminal and civil justice systems at all levels of government.

The NCFS charter identifies six goals: (1) To recommend priorities for standards development to the Attorney General; (2) to review and recommend guidance identified or developed by subject-matter experts; (3) to develop proposed guidance concerning the intersection of forensic science and the courtroom; (4) to develop policy recommendations, including a uniform code of professional responsibility and minimum requirements for training, accreditation, and certification; (5) to consider the recommendations of the National Science and Technology Council’s Subcommittee on Forensic Science; and (6) to identify and assess

the current and future needs of the forensic sciences to strengthen their disciplines and meet growing demands. The NCFS’s supporting documents, including current charter, bylaws, and work product development guidance, are available for review at <https://www.justice.gov/ncfs> and <https://www.justice.gov/ncfs/work-products>.

Federal advisory committees operate on two-year renewable terms. Term 1 for NCFS began on April 23, 2013, when the original charter was filed, and concluded on April 23, 2015. NCFS was renewed for Term 2, which expires on April 23, 2017. Over the last 3 years (as of April 9, 2017), NCFS developed 43 work products, including 20 recommendations to the Attorney General, to support these goals. The NCFS has met its initial mandate, and in light of the upcoming expiration of its charter, the Department is now considering appropriate next steps.

*Issue for Comment*—Commenters are requested to identify proposals to: (1) Improve the underlying science and validity of forensic evidence; (2) improve the operational management systems of forensic science service providers; and (3) improve the understanding of forensic science by legal practitioners.

In formulating a proposal, commenters may wish to consider the following questions:

(A) What are the biggest needs in forensic science inside the Department and at the federal, state, local, and tribal level?

(B) What is required to improve forensic science practices at the federal, state, local, and tribal levels?

(C) What is needed to improve capacity at federal, state, local, and tribal levels?

(D) What are the barriers to improving capacity and what resources are needed to overcome those barriers?

(E) What are the specific issues related to digital forensic evidence analysis and how can the Department address those needs?

(F) How should the Department, or any Department entity, coordinate with the Organization of Scientific Area Committees?

(G) What resources and relationships can the Department draw on to ensure thoughtful and representative input?

Proposals may include some combination of a Federal Advisory Committee, a new office at the Department, an inter-agency working group, regularly scheduled stakeholder meetings, etc. If the commenter believes a Federal Advisory Committee structure is appropriate, commenters are encouraged to address structural issues

such as size, membership, work product development process, reporting structure (*i.e.*, to whom recommendations are provided), opportunity for public comment, and opportunity for robust debate among members.

*Posting of Public Comments:* To ensure proper handling of comments, please reference “Docket No. OLP 160” on all electronic and written correspondence. The Department encourages all comments be submitted electronically through [www.regulations.gov](http://www.regulations.gov). Paper comments that duplicate the electronic submission are not necessary as all comments submitted to [www.regulations.gov](http://www.regulations.gov) will be posted for public review and are part of the official docket record.

In accordance with the Federal Records Act, please note that all comments received are considered part of the public record, and shall be made available for public inspection online at [www.regulations.gov](http://www.regulations.gov). The comments to be posted may include personally identifiable information (such as your name, address, etc.) and confidential business information voluntarily submitted by the commenter.

The Department will post all comments received on [www.regulations.gov](http://www.regulations.gov) without making any changes to the comments or redacting any information, including any personally identifiable information provided. It is the responsibility of the commenter to safeguard personally identifiable information. You are not required to submit personally identifying information in order to comment and the Department recommends that commenters not include personally identifiable information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses that they do not want made public in their comments as such submitted information will be available to the public via [www.regulations.gov](http://www.regulations.gov). Comments may be provided anonymously, but those commenters who do share contact information are requested to include brief background information regarding commenter subject-matter experience and expertise. Comments submitted through [www.regulations.gov](http://www.regulations.gov) will not include the email address of the commenter unless the commenter chooses to include that information as part of his or her comment.

Dated: April 10, 2017.

**Kira Antell,**

*Senior Counsel, Office of Legal Policy.*

[FR Doc. 2017-07512 Filed 4-12-17; 8:45 am]

BILLING CODE 4410-18-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Georgia Coastal Land Co., et al.*, No. 2:16-cv-00060-LGW-RSB, was lodged with the United States District Court for the Southern District of Georgia on April 7, 2017.

This proposed Consent Decree concerns a complaint filed by the United States against Georgia Coastal Land Company, Provident Land Holdings Company, Provident Construction Company, and William L. Nutting, pursuant to Sections 301, 309, and 404 of the Clean Water Act, 33 U.S.C. 1311(a), 1319(g)(9), and 1344(s), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore impacted areas and perform mitigation, and to pay civil and administrative penalties.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Samara Spence, Trial Attorney for the United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044 and refer to *United States v. Georgia Coastal Land Co., et al.*, DJ #90-5-1-1-20782.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Southern District of Georgia, Brunswick Division, 801 Gloucester Street, Brunswick, GA 31520. In addition, the proposed Consent Decree may be examined electronically at <http://www.justice.gov/enrd/consent-decrees>.

**Cherie L. Rogers,**

*Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 2017-07499 Filed 4-12-17; 8:45 am]

BILLING CODE 4410-15-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Labor Certification Process for the Temporary Employment of H-2A and H-2B Foreign Workers in the United States: 2017 Allowable Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration of the Department of Labor is issuing this Notice to announce: (1) The allowable charges for 2017 that employers seeking H-2A workers in occupations other than range herding may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2017 under the H-2A and H-2B programs. The Notice also includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

**DATES:** Effective on April 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** William W. Thompson, II, Administrator, Office of Foreign Labor Certification (OFLC), U.S. Department of Labor, 200 Constitution Avenue NW., Room PPII-12-200, Washington, DC 20210. Telephone: 202-513-7350 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The United States (U.S.) Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A or H-2B nonimmigrant temporary workers in the U.S. unless the petitioner has received from the DOL an H-2A or H-2B labor certification. Both the H-2A and H-2B labor certifications provide that: (1) There are not sufficient U.S. workers who are qualified and who will be available to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. See 20 CFR 655.1(a)(H-2B); 20 CFR 655.100 (H-2A).

### Allowable Meal Charge

Among the minimum benefits and working conditions that the Department requires employers to offer their U.S. and H-2A workers who are not engaged in range occupations are three meals a day or free and convenient cooking and kitchen facilities so workers may prepare their own meals.<sup>1</sup> See 20 CFR 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. *Id.*

The Department establishes the methodology for determining the maximum amounts that H-2A agricultural employers may charge their U.S. and foreign workers for providing them with three meals per day during employment. See 20 CFR 655.173(a). This methodology allows for annual adjustments of the previous year's maximum allowable charge based upon updated U.S. Consumer Price Index for All Urban Consumers (CPI-U) data for Food, not seasonally adjusted. *Id.* The maximum charge allowed by 20 CFR 655.122(g) is adjusted by the same percentage as the 12-month percent change in the CPI for all Urban Consumers for Food (CPI-U for Food).<sup>2</sup> *Id.* The OFLC Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer, as set forth in 20 CFR 655.173(b).

The percentage change in the CPI-U for Food between December 2015 and December 2016 was -0.2 percent.<sup>3</sup> Accordingly, the maximum allowable charge under 20 CFR 655.122(g) shall be no more than \$12.07 per day, unless the OFLC Certifying Officer approves a higher charge as authorized under 20 CFR 655.173(b).

### Reimbursement for Daily Travel Subsistence

The H-2A regulations (20 CFR 655.122(h)(1)) and the H-2B regulations (20 CFR 655.20(j)(1)(i)) establish that the minimum daily travel subsistence expense for meals, for which a worker is entitled to reimbursement, must be at

<sup>1</sup> H-2A employers must provide workers engaged in herding or the production of livestock on the range meals or food to prepare meals without charge or deposit charge. See 20 CFR 655.210(e).

<sup>2</sup> The 12-month percent change in the CPI-U for Food for 2006 through 2016 is available through BLS' Web site at <https://www.bls.gov/cpi/>.

<sup>3</sup> In 2016, the maximum allowable charge under 20 CFR 655.122(g) was \$12.09 per day. 81 FR 9885, 9886 (Feb. 26, 2016). As a result, the maximum allowable meal charge for 2017 has decreased only \$.02.

least as much as the employer would charge for providing the worker with three meals a day during employment (if applicable). The minimum daily travel subsistence expense for meals may in no event be less than the amount permitted under § 655.173(a), *i.e.*, the charge annually adjusted by the 12-month percentage change in CPI-U for Food.

The Department bases the maximum meals component of the daily travel subsistence expense on the standard minimum Continental United States (CONUS) per diem rate as established by the General Services Administration (GSA). The CONUS minimum meals component, reported as Meals and Incidental Expenses, remains \$51.00 per day for 2017.<sup>4</sup> Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the CONUS meal rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, up to 75 percent of the maximum reimbursement for meals, or \$38.25, based on the GSA per diem schedule. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.173 as specified above.

The term "subsistence" includes both meals and lodging during travel to and from the worksite. Therefore, an H-2A employer is responsible for providing (either paying in advance or reimbursing a worker) the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the work contract period, and upon the worker completing the contract or being dismissed without cause, return costs. Similarly, an H-2B employer is responsible for providing (either paying in advance or reimbursing a worker) the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the job order period of employment, and upon the worker completing the job order period of employment or being dismissed early, return costs. In those instances where a worker must travel to obtain a visa so that the worker may enter the U.S. to come to work for the employer, the employer must pay for the

transportation and daily subsistence costs of that part of the travel as well.

Employers are required to assume responsibility for the reasonable costs associated with the worker's travel, including transportation, food, and, in those instances where it is necessary, lodging. The minimum and maximum daily travel meal reimbursement amounts are established above. If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging, must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period, but is not responsible for unauthorized detours, and if the worker completes the contract or is dismissed as described above, return transportation and subsistence costs, including lodging costs where necessary. This policy applies equally to instances where the worker is traveling within the U.S. to the employer's worksite.

For further information on when the employer is responsible for lodging costs, please see the Department's H-2A Frequently Asked Questions on Travel and Daily Subsistence, which may be found on the OFLC Web site: <http://www.foreignlaborcert.doleta.gov/>.

**Byron Zuidema,**

*Deputy Assistant Secretary for Employment and Training, Department of Labor.*

[FR Doc. 2017-07464 Filed 4-12-17; 8:45 am]

**BILLING CODE 4510-FF-P**

**DEPARTMENT OF LABOR**

**Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting**

**AGENCY:** Veterans' Employment and Training Service (VETS), Department of Labor.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at 202-693-4734.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Wednesday, April 26, 2017 by contacting Mr. Gregory Green at 202-693-4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This Notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

**DATES:** Wednesday, May 3, 2017 beginning at 9:30 a.m. and ending at approximately 4:00 p.m. (EST).

**ADDRESSES:** The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, Conference Room N3437 A, B, C and D. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory Green, Assistant Designated Federal Official for the ACVETEO, (202) 693-4734.

**SUPPLEMENTARY INFORMATION:** The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for VETS, with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

**Agenda**

9:30 a.m. Welcome and remarks, Sam Shellenberger, Deputy Assistant Secretary of Labor for Veterans' Employment and Training  
9:35 a.m. Administrative Business, Mika Cross, Designated Federal Official

<sup>4</sup> See Maximum Per Diem Rates for the Continental United States (CONUS), 81 FR 54805 (August 17, 2016); see also <http://www.gsa.gov/perdiem>.

9:40 a.m. Transition and Training Subcommittee Briefing

10:10 a.m. Direct Services Subcommittee briefing

10:40 a.m. Barriers to Employment Subcommittee Briefing

11:10 a.m. Break

11:15 a.m. USERRA presentation from Deputy Director Kenan Torrans of Compliance Programs

12:00 p.m. Lunch

1:00 p.m. BLS brief on the 2016 Employment Situation of Veterans

2:00 p.m. Break

2:15 p.m. Subcommittee Discussion/Assignments, ACVETEO Chairman

3:15 p.m. Public Forum, Timothy Green Designated Federal Official

4:00 p.m. Adjourn

*Security Instructions:* Meeting participants should use the visitors entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.
2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).
3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.
4. Laptops and other electronic devices may be inspected and logged for identification purposes.
5. Due to limited parking options, Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

*Notice of Intent To Attend the Meeting:* All meeting participants are being asked to submit a notice of intent to attend by Friday, April 28, 2017, via email to Mr. Gregory Green at [green.gregory.b@dol.gov](mailto:green.gregory.b@dol.gov), subject line "May 2017 ACVETEO Meeting."

Signed in Washington, DC, this 3rd day of April 2017.

**Sam Shellenberger,**

*Deputy Assistant Secretary for Operations and Management, Veterans' Employment and Training Service.*

[FR Doc. 2017-07465 Filed 4-12-17; 8:45 am]

**BILLING CODE 4510-79-P**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

#### Proposed Collection; Comment Request

**AGENCY:** Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation (OWCP) is soliciting comments concerning the proposed collection: Request for Examination and/or Treatment (LS-1). A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before June 12, 2017.

**ADDRESSES:** Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S-3323, Washington, DC 20210, telephone/fax (202) 354-9647, Email [Ferguson.Yoon@dol.gov](mailto:Ferguson.Yoon@dol.gov). Please use only one method of transmission for comments (mail, fax, or Email).

#### SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing or building a vessel. In addition, several acts extend coverage to certain other employees.

Under section 7 (33 U.S.C., Chapter 18, Section 907) of the Longshore Act the employer/insurance carrier is

responsible for furnishing medical care for the injured employee for such period of time as the injury or recovery period may require. Form LS-1 serves two purposes: It authorizes the medical care, and it provides a vehicle for the treating physician to report the findings, treatment given, and anticipated physical condition of the employee. This information collection is currently approved for use through August 31, 2017.

II. *Review Focus:* The Department of Labor 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.

III. *Current Actions:* The Department of Labor seeks the extension of approval of this information collection in order to carry out its responsibility to verify authorized medical care and entitlement to compensation benefits.

*Agency:* Office of Workers' Compensation Programs.

*Type of Review:* Extension.

*Title:* Request for Examination and/or Treatment.

*OMB Number:* 1240-0029.

*Agency Number:* LS-1.

*Affected Public:* Individuals or households; Business or other for-profit.

*Total Respondents:* 15,000.

*Total Annual Responses:* 45,000.

*Estimated Total Burden Hours:*

48,735.

*Estimated Time per Response:* 65 minutes.

*Frequency:* On occasion.

*Total Burden Cost (capital/startup):*

\$0.

*Total Burden Cost (operating/maintenance):* \$1,482,858.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 28, 2017.

**Yoon Ferguson,**

*Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.*

[FR Doc. 2017-07466 Filed 4-12-17; 8:45 am]

**BILLING CODE 4510-CF-P**

**MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION**

**Sunshine Act Meetings**

**TIME AND DATE:** 9:00 a.m. to 3:15 p.m., Wednesday, April 26, 2017.

**PLACE:** The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

**STATUS:** This meeting of the Board of Trustees will be open to the public.

**MATTERS TO BE CONSIDERED:** (1) Call to Order & Chair's Remarks; (2) Executive Director's Remarks; (3) Election of Officers of the Board and Executive Committee; (4) Consent Agenda Approval (Minutes of the October 27, 2016, and February 9, 2017, Board of Trustees Meetings; Board Reports submitted for Education Programs, Finance and Management, Udall Center for Studies in Public Policy-Native Nations Institute-Udall Archives & their Revised Workplan, and U.S. Institute for Environmental Conflict Resolution; resolution regarding Revised Allocation of Funds to the Udall Center for Studies in Public Policy; and Board takes notice of any new and updated Personnel Policies); (5) 2018-2022 Strategic Planning Session; (6) U.S. Institute for Environmental Conflict Resolution presentation; (7) Ethics Training; and (8) Financial and Internal Controls Update.

**CONTACT PERSON FOR MORE INFORMATION:** Philip J. Lemanski, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901-8500.

Dated: April 10, 2017.

**Elizabeth E. Monroe,**

*Executive Assistant, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.*

[FR Doc. 2017-07540 Filed 4-11-17; 11:15 am]

**BILLING CODE 6820-FN-P**

**NEIGHBORHOOD REINVESTMENT CORPORATION**

**Sunshine Act; Regular Board of Directors Meeting**

**TIME AND DATE:** 1:00 p.m., Tuesday, April 18, 2017.

**PLACE:** NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington, DC 20002.

**STATUS:** Open (with the exception of Executive Sessions).

**CONTACT PERSON:** Jeffrey Bryson, EVP & General Counsel/Secretary, (202) 760-4101; [jbryson@nw.org](mailto:jbryson@nw.org).

**AGENDA:**

- I. CALL TO ORDER
- II. Approval of Minutes
- III. Executive Session: Report From CEO
- IV. Executive Session: Performance Evaluations of Officers
- V. Executive Session: WeConnect Update
- VI. Grants to Capital Corporations
- VII. Budget Update
- VIII. CounselorMax
- IX. Corporate Goals
- X. Management Program Backgrounds and Updates
- IX. Adjournment

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Report from CEO
- Performance Evaluations of Officers
- WeConnect Update

**Jeffrey T. Bryson,**

*EVP & General Counsel/Corporate Secretary.*

[FR Doc. 2017-07537 Filed 4-11-17; 11:15 am]

**BILLING CODE 7570-02-P**

**NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-413 and 50-414; NRC-2017-0097]**

**Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal by applicant.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Duke Energy Carolinas, LLC to withdraw its application dated May 26, 2016, for a proposed amendment to Facility Operating License Nos. NPF-35 and NPF-52. The proposed amendment would have revised the Updated Final Safety Analysis Report (UFSAR) to add descriptions to several sections of the UFSAR to clarify how a shutdown unit supplying either its normal or emergency power source may be credited for operability of shared components supporting the operating unit.

**DATES:** April 13, 2017.

**ADDRESSES:** Please refer to Docket ID NRC-2017-0097 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-2017-0097. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto: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](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

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

**FOR FURTHER INFORMATION CONTACT:** Michael Mahoney, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-3857, email: [Michael.Mahoney@nrc.gov](mailto:Michael.Mahoney@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC has granted the request of Duke Energy Carolinas, LLC (the licensee) to withdraw its May 26, 2016, application (ADAMS Accession No. ML16147A105) for proposed amendment to Facility Operating License No. NPF-35 and NPF-52 for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendment would have revised the Updated Final Safety Analysis Report (UFSAR) to add descriptions to several sections of the UFSAR to clarify how a shutdown unit supplying either its normal or emergency power source may be credited for operability of shared components supporting the operating unit.

The licensee's application was previously noticed in the **Federal Register** on August 2, 2016 (81 FR 50731). The licensee provided responses to NRC staff requests for additional information related to this action on November 10, 2016 and February 13, 2017 (ADAMS Accession Nos. ML16315A411 and ML17045A363, respectively), and a request to withdraw the application on March 23, 2017 (ADAMS Accession No. ML17083A077).

Dated at Rockville, Maryland, this 5th day of April 2017.

For the Nuclear Regulatory Commission.

**Michael Mahoney,**

*Project Manager, Plant Licensing Branch II-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2017-07504 Filed 4-12-17; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 52-047; NRC-2016-0119]

### Tennessee Valley Authority; Clinch River Nuclear Site; Early Site Permit Application

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Intent to prepare environmental impact statement and conduct scoping process; public meeting and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received an application from the Tennessee Valley Authority (TVA), for an early site permit (ESP) for the Clinch River Nuclear (CRN) Site, located in Roane County, Tennessee, along the Clinch River, approximately 25 miles west-southwest of downtown Knoxville, Tennessee. The purposes of this notice are to inform the public that the NRC staff will be preparing an environmental impact statement (EIS) as part of the review of the application for the ESP and to provide the public with an opportunity to participate in the environmental scoping process as defined in the regulations.

**DATES:** Submit comments by June 12, 2017. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date. The public scoping meetings will be held on May 15, 2017.

**ADDRESSES:** You may submit comment by any of the following methods (unless this document describes a different

method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0119. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC Project Email Address:*

Electronic comments may be sent by email to the NRC at [ClinchRiverESPEIS@nrc.gov](mailto:ClinchRiverESPEIS@nrc.gov).

- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN-12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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

#### FOR FURTHER INFORMATION CONTACT:

Patricia Vokoun, telephone: 1-800-368-5642, extension 3470, email: [Patricia.Vokoun@nrc.gov](mailto:Patricia.Vokoun@nrc.gov); or Tamsen Dozier, telephone: 1-800-368-5642, extension 2272, email: [Tamsen.Dozier@nrc.gov](mailto:Tamsen.Dozier@nrc.gov). Both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Obtaining Information and Submitting Comments

###### A. Obtaining Information

Please refer to Docket ID NRC-2016-0119 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0119.

- *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](mailto: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 the **SUPPLEMENTARY INFORMATION** section. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this notice entitled, Availability of Documents.

- *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-2016-0119 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions received through the Federal Rulemaking Web site (<http://www.regulations.gov>) in the *Regulations.gov* docket (NRC-2016-0119), and will also enter the comment submissions into ADAMS. Comments submitted through the NRC project email address will only be available in 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. Introduction

Pursuant to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), on May 12, 2016, TVA submitted an application for an ESP for the Clinch River Nuclear (CRN) Site, located on approximately 1,200 acres in Roane County, Tennessee, along the Clinch River, approximately 25 miles west-southwest of downtown Knoxville, Tennessee.

##### III. Further Information

A notice of receipt and availability of the application, including the environmental report (ER), was published in the **Federal Register** on June 23, 2016 (81 FR 40929). A notice of acceptance for docketing of the

application for the ESP was published in the **Federal Register** on January 12, 2017 (82 FR 3812). A notice of hearing and opportunity to petition for leave to intervene in the proceeding on the application was published in the **Federal Register** on April 4, 2017, (82 FR 16436).

The purposes of this notice are to inform the public that the NRC staff will be preparing an environmental impact statement as part of the review of the application for the ESP and to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In addition, as outlined in 36 CFR 800.8(c), “Coordination with the National Environmental Policy Act,” the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). Pursuant to 36 CFR 800.8(c), the NRC staff intends to use the process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth on 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 51.50, TVA submitted the environmental ER as part of the application; the ER is available in ADAMS under Accession No. ML16144A145. The application may also be viewed on the NRC’s public Web site at <https://www.nrc.gov/reactors/new-reactors/esp/clinch-river.html>. In addition, the Oak Ridge Public Library,

1401 Oak Ridge Turnpike, Oak Ridge, Tennessee, and the Kingston Public Library, 1004 Bradford Way, Kingston, Tennessee, have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS as part of the review of the application for the ESP at the CRN Site. Possible alternatives to the proposed action (issuance of the ESP for the CRN Site) include no action and alternate sites. As set forth in 10 CFR 51.20(b)(1), issuance of an ESP under 10 CFR part 52 is an action that requires an EIS. This notice is being published in accordance with NEPA and the NRC’s regulations in 10 CFR part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal Government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

- a. Define the proposed action that is to be the subject of the EIS;
- b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;
- c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;
- d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;
- e. Identify other ER and consultation requirements related to the proposed action;

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i);

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission’s tentative planning and decision-making schedule;

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

i. Describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

- a. The applicant, TVA;
- b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;
- c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;
- d. Any affected Indian Tribe;
- e. Any person who requests or has requested an opportunity to participate in the scoping process; and
- f. Any person who intends to petition for leave to intervene in the proceeding, or who has submitted such a petition, who is admitted as a party.

**III. Availability of Documents**

The following table indicates how the key reference documents related to the application and the NRC staff’s review processes may be accessed.

Document title	ADAMS Accession No. or Web site
10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function.	<a href="https://www.nrc.gov/reading-rm/doc-collections/cfr/part051/">https://www.nrc.gov/reading-rm/doc-collections/cfr/part051/</a> .
10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants.	<a href="https://www.nrc.gov/reading-rm/doc-collections/cfr/part052/">https://www.nrc.gov/reading-rm/doc-collections/cfr/part052/</a> .
10 CFR Part 100, Reactor Site Criteria ..... NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants.	<a href="https://www.nrc.gov/reading-rm/doc-collections/cfr/part100/">https://www.nrc.gov/reading-rm/doc-collections/cfr/part100/</a> . <a href="https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1555/">https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1555/</a> .
NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process.	<a href="https://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0298/">https://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0298/</a> .
Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations (Supplement 1).	<a href="https://www.nrc.gov/docs/ML1306/ML13067A354.pdf">https://www.nrc.gov/docs/ML1306/ML13067A354.pdf</a> .
Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations.	<a href="https://www.nrc.gov/docs/ML1218/ML12188A053.pdf">https://www.nrc.gov/docs/ML1218/ML12188A053.pdf</a> .
Fact Sheet on Nuclear Power Plant Licensing Process .....	<a href="https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/licensing-process-fs.html">https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/licensing-process-fs.html</a> .
Regulatory Guide 1.206, Combined License Applications for Nuclear Power Plants.	<a href="https://www.nrc.gov/reading-rm/doc-collections/reg-guides/power-reactors/rg/01-206/">https://www.nrc.gov/reading-rm/doc-collections/reg-guides/power-reactors/rg/01-206/</a> .
Nuclear Regulatory Commission Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions.	<a href="https://www.gpo.gov/fdsys/pkg/FR-2004-08-24/pdf/04-19305.pdf">https://www.gpo.gov/fdsys/pkg/FR-2004-08-24/pdf/04-19305.pdf</a> .

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC–2016–0119. The Federal Rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0119); (2) click the “Sign up for Email Alerts” link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

#### IV. Public Scoping Meeting

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold two identical public scoping meetings for the EIS regarding the TVA ESP application.

The scoping meetings will be held at Pollard Technology Conference Center Auditorium, 210 Badger Avenue, Oak Ridge, Tennessee on May 15, 2017. The meeting will convene at 2:00 p.m. and will continue until approximately 4:00 p.m. The second meeting will convene at 7:00 p.m., with a repetition of the overview portions of the first meeting, and will continue until approximately 9:00 p.m. The meetings will be transcribed and will include the following:

(1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; and

(2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions for 1 hour prior to the start of each public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below.

Persons may register to attend or present oral comments at the meeting on the scope of the NEPA review by contacting Ms. Patricia Vokoun by telephone at 1–800–368–5642, extension 3470, or by email to the NRC at [ClinchRiverESPEIS@nrc.gov](mailto:ClinchRiverESPEIS@nrc.gov) (no formal comments will be accepted through this email address) no later than May 7, 2017. Members of the public may also register to speak at the meeting prior to the start of the session. Individual oral comments may be

limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Vokoun’s attention no later than May 1, 2017, so that the NRC staff can determine whether the request can be accommodated. Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determination and conclusions reached on the scope of the environmental review including the significant issues identified, and will send this summary to each participant in the scoping process for whom the staff has an address and will make this summary publicly available. The NRC staff will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a separate public meeting. Copies of the draft EIS will be available for public inspection at the PDR through the address in Section I.A. of this notice and one copy per request will be provided free of charge. After receipt and consideration of comments on the draft EIS, the NRC will prepare a final EIS, which will also be available to the public.

Dated at Rockville, Maryland, this 7th day of April, 2017.

For the Nuclear Regulatory Commission,  
**Francis M. Akstulewicz**,  
*Director, Division of New Reactor Licensing,*  
*Office of New Reactors.*

[FR Doc. 2017–07501 Filed 4–12–17; 8:45 am]

**BILLING CODE 7590–01–P**

### NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7005; NRC–2017–0098]

#### Exemption Request for Waste Control Specialists LLC; Andrews County, Texas

**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) and finding of no significant impact (FONSI)

in support of the NRC’s consideration of issuance of a new 2017 order that would supersede an order previously issued to Waste Control Specialists LLC (WCS) on December 3, 2014 (2014 Order). The 2014 Order contained conditions and criteria that allowed WCS to be exempt from the NRC’s regulations concerning special nuclear material (SNM).

**DATES:** The EA and FONSI are available as of April 13, 2017.

**ADDRESSES:** Please refer to Docket ID NRC–2017–0098 when contacting the NRC about the availability of information regarding this document. You may access 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–2017–0098. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals 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](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

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

**FOR FURTHER INFORMATION CONTACT:** James Park, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6954; email: [James.Park@nrc.gov](mailto:James.Park@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The current action is in response to WCS’s December 4, 2014, request for an exemption from NRC regulations to transfer aboveground, under specified conditions, wastes containing SNM in excess of the critical mass limits specified in section 150.11 of title 10 of the *Code of Federal Regulations* (10

CFR), "Critical Mass," at its Andrews County, Texas, facility, without first obtaining from the NRC a 10 CFR part 70 license.

The WCS operates a facility in Andrews County, Texas, (WCS site) that is currently licensed by Texas to receive, possess, use, store, dispose and transfer certain types of radioactive material contained in Low-Level Waste (LLW) and Mixed Waste (MW) (*i.e.*, waste that is both hazardous waste and LLW). The WCS site also receives hazardous and toxic waste for disposal. Under an Agreement authorized by the Atomic Energy Act, as amended, the NRC can relinquish and a State can assume, regulatory authority over radioactive material specified in an Agreement with the NRC. In 1963, Texas entered into an Agreement and assumed regulatory authority over source, byproduct, and SNM less than a critical mass.

On November 30, 1997, the State of Texas Department of Health (TDH) issued WCS a radioactive materials license (RML) to possess, treat, and store LLW (RML R04971). In 1997, WCS began accepting Resource Conservation and Recovery Act and Toxic Substance Control Act wastes for treatment, storage, and disposal. Later that year, WCS received a license from the TDH for treatment and storage of MW and LLW. The MW and LLW streams may contain quantities of SNM. In 2007, regulatory responsibility for RML R04971 was transferred by TDH to the Texas Commission on Environmental Quality (TCEQ). In September 2009, the TCEQ issued RML R04100 to WCS for disposal of LLW.

Section 70.3 of 10 CFR part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain a license pursuant to the requirements of 10 CFR part 70, "Domestic Licensing of Special Nuclear Material." The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities, as defined in 10 CFR 150.11, "Critical Mass." However, the Commission may grant exemptions from the requirements of specific regulations pursuant to 10 CFR 70.17(a), if the Commission determines the exemptions are "authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

In September 2000, WCS submitted to the NRC an exemption request from the licensing requirements in 10 CFR part 70. On November 21, 2001, the NRC issued an Order to WCS (2001 Order) granting an exemption to WCS from certain NRC regulations and permitted

WCS, under specified conditions, to possess waste containing SNM in greater quantities than specified in 10 CFR part 150, "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274," at the WCS Site without obtaining an NRC license pursuant to 10 CFR part 70. The NRC published the 2001 Order in the **Federal Register** (FR) on November 15, 2001 (66 FR 57489). The publicly available November 21, 2001, NRC letter to WCS (ADAMS Accession No. ML030130085), included as attachments the 2001 Order, the October 2001 EA, and the November 2001 Safety Evaluation Report (SER). The EA discussed the conditions specified in the 2001 Order.

By letters dated August 6, 2003, and March 14, 2004, WCS requested a modification to the 2001 Order to allow it to use additional reagents for chemical stabilization of mixed waste containing SNM. The NRC issued the new Order on November 4, 2004 (2004 Order), which superseded the 2001 Order. The NRC published the 2004 Order in the FR on November 12, 2004 (69 FR 65468). The October 2004 EA (ADAMS Accession No. ML043020614) and October 2004 SER (ADAMS Accession No. ML042250362) discussed the new conditions specified in the 2004 Order. The 2004 Order allowed WCS to use such chemical reagents as it deems necessary for treatment and stabilization of mixed waste containing SNM, provided that the SNM mass does not exceed specified concentration limits.

By letter dated December 10, 2007, WCS requested modifications to the 2004 Order. The NRC issued the new Order to WCS on October 29, 2009 (2009 Order), which superseded the 2004 Order. The NRC published the 2009 Order in the FR on October 26, 2009 (74 FR 55072). The October 2009 EA (ADAMS Accession No. ML092460509) and October 2009 SER (ADAMS Accession No. ML093070307) discussed the new conditions specified in the 2009 Order. The 2009 Order changed the 2004 Order Conditions regarding sampling of waste, what is allowed to be in the waste, and the amount of highly water soluble SNM in each waste package.

In July 2013, the TCEQ began to merge the license requirements in RML R04971 (for the radioactive waste treatment, storage, and processing facility) with the requirements in RML R04100 (for the LLW land disposal facility). In Amendment No. 22 of RML R04100, the TCEQ license requirements related to the 2009 Order in RML R04971 for the WCS treatment, storage,

and processing facility were transferred to RML R04100. Previous NRC Orders referred to that location as the treatment, storage, and processing facility. Subsequently, WCS began referring to that location as the "Treatment, Storage and Disposal Facility." The NRC will use the name "Treatment, Storage, and Disposal Facility" and the abbreviation TSDF to reference that location at the WCS Site in this EA.

By letter dated July 18, 2014, WCS requested modifications to the 2009 Order to allow movement to and temporary storage of some of the Los Alamos National Laboratory (LANL) Waste at the WCS Federal Waste Disposal Facility (FWF) rather than at the TSDF. The LANL Waste is U.S. Department of Energy (DOE) waste that originated at the LANL that is destined for disposal at the DOE Waste Isolation Pilot Plant (WIPP) Facility. Due to the February 14, 2014, WIPP incident, the DOE suspended operations at the WIPP Facility. In April 2014, WCS began receiving some LANL Waste from DOE that met the conditions in the 2009 Order and WCS began storing the waste at the TSDF. The NRC issued the 2014 Order to WCS on December 11, 2014, which superseded the 2009 Order. The NRC published the 2014 Order in the FR on December 11, 2014 (79 FR 73647), allowing temporary storage of some of the LANL Waste at the WCS FWF. The October 2014 EA (ADAMS Accession No. ML14238A208) and November 2014 SER (ADAMS Accession No. ML14230A804) discussed the new conditions specified in the 2014 Order.

The previous NRC Orders (2001, 2004, 2009, and 2014) addressed the issue that 10 CFR 70.3 requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain an NRC license pursuant to the requirements in 10 CFR part 70. However, 10 CFR 150.10 exempts a person in an Agreement State who possesses SNM in quantities not sufficient to form a critical mass from the NRC's imposed licensing requirements and regulations. The method for calculating the quantity of SNM not sufficient to form a critical mass is set out in 10 CFR 150.11. Therefore, prior to the 2001 Order, WCS was required to comply with NRC regulatory requirements and obtain an NRC specific license to possess SNM in quantities greater than amounts established in 10 CFR 150.11. The 2001 WCS exemption request to NRC proposed to use concentration-based limits rather than mass-based limits at a specific location at the WCS Site. The 2001 Order granted, and the subsequent

NRC Orders (2004, 2009, and 2014) continued the use of concentration-based limits and other conditions at specific locations at the WCS Site. The TCEQ incorporated the concentration-based limits and other conditions from each respective NRC Order (2001, 2004, 2009, and 2014) into the WCS license for the specific locations at the WCS Site where the concentration-based limits instead of mass-based limits and other conditions are applicable.

## II. Environmental Assessment

### Description of the Proposed Action

By letter dated December 4, 2014 (ADAMS Accession No. ML14342A773), WCS requested an exemption from NRC regulations to possess SNM in excess of the critical mass limits specified in 10 CFR 150.11 while performing specific transfers aboveground at the WCS Site, without first obtaining a 10 CFR part 70 license. Through subsequent public interactions between the NRC and WCS, the WCS request was revised to allow transfer of waste from off-site the WCS Site directly to either the Compact Waste Facility (CWF) or the FWF, only for disposal (Direct Transfer), without the waste being applied towards the aboveground SNM possession limit for the WCS Site. Pursuant to the NRC proposed conditions in the 2017 Order: (1) WCS would continue to possess waste when it enters the WCS-owned rail spur (for rail shipments) or when it enters the WCS Site (for truck shipments); (2) for Direct Transfers, waste would not apply towards the aboveground SNM possession limit until it is removed from the rail car (for rail shipments) or removed from the truck (for truck shipments); and (3) for Direct Transfers, waste would not be processed, treated, or stored at the WCS Site. The NRC used the concept of Criticality Safety Index (CSI) as the safety basis to support the NRC proposed conditions in the 2017 Order. All aboveground waste containing SNM possessed by WCS would apply towards the aboveground SNM possession limit, except waste meeting the Direct Transfer proposed conditions in the 2017 Order.

The NRC staff evaluated the three types of Direct Transfers:

- Off-site containerized waste that arrives by truck and sent directly to the CWF only for disposal;
- Off-site containerized waste that arrives by truck and sent directly to the FWF only for disposal; and
- Off-site bulk waste that arrives by truck and sent directly to the FWF only for disposal.

The following factors informed the NRC's evaluation of the proposed action:

- The concept of CSI is discussed in 10 CFR part 71, "Packaging and Transport of Radioactive Material." The provisions in 10 CFR part 71 regulate the packaging, preparation for shipment, and transportation of radioactive material on public roadways.

- *10 CFR 71.4 defines CSI as:* "the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages, overpacks, or freight containers containing fissile material during transportation. Determination of the CSI is described in 10 CFR 71.22, 71.23, and 71.59. The CSI for an overpack, freight container, consignment, or conveyance containing fissile material packages is the arithmetic sum of the CSIs of all the fissile material packages contained within the overpack, freight container, consignment, or conveyance."

- *The NRC Glossary found at <https://www.nrc.gov/reading-rm/basic-ref/glossary.html>, defines Fissile Material as:* "A nuclide that is capable of undergoing fission after capturing low-energy thermal (slow) neutrons . . . ."

- *10 CFR 71.22(a) includes:* "A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport if the material is shipped in accordance with this section." Other provisions in the regulation specify the CSIs for individual packages and for the shipments of multiple packages. Section 71.22(d)(3) specifically includes: "For a shipment of multiple packages containing fissile material, the sum of the CSIs must be less than or equal to 50 (for shipment on a nonexclusive use conveyance) . . . ."

- Use of the CSI of 50 from 10 CFR part 71 for the safe transportation of radioactive material on public roads provides adequate safety for direct transfers at the WCS Site.

- The definition of "conveyance" in 10 CFR 71.4 includes: "For transport by public highway or rail any transport vehicle or freight container . . . ."

- A transportation package is a container placed on or in a conveyance. A transportation package can contain one or more waste packages.

- A waste package is a container with waste that was placed inside a transportation package.

- For this modified request, the concept of CSI only applies to transportation packages.

- The SNM contained in either a transportation package or a waste package that meets the NRC proposed conditions in the 2017 Order do not apply towards the aboveground SNM possession limit at the WCS Site. Otherwise, that SNM does apply towards the aboveground SNM possession limit at the WCS Site.

- When waste is removed from a railcar at the WCS Site, the SNM contained in that waste does apply towards the aboveground SNM possession limit at the WCS Site.

Under the modified request, the Direct Transfers would only occur on appropriately dedicated secure access roads, with conveyances travelling to either the CWF or the FWF under the 25 miles per hour speed limit.

Additionally, Direct Transfers would be escorted by at least two radiation safety technicians and two waste acceptance personnel, with entrances to the access roads blocked for a distance of 50 yards from a Direct Transfer.

At any one time, WCS may have one conveyance containing one or more transportation packages with waste traveling to the CWF and one conveyance containing one or more transportation packages with waste traveling to the FWF. There would be no limit to the number of empty conveyances (*i.e.*, with either no or empty transportation packages) traveling from the CWF and traveling from the FWF. Additionally, there may only be a maximum of one transportation package open at the CWF and one transportation package open at the FWF at the same time. The waste would be allowed to be at the CWF or the FWF for a maximum of 24 hours before being safely disposed of at that location, unless external factors (*e.g.*, weather, equipment) dictate otherwise.

### Need for the Proposed Action

The need expressed by WCS in its initial December 4, 2014, request for the proposed action is to reduce the number of onsite transfers required to process rail and truck shipments of wastes containing SNM. The WCS considers that approval of this proposed action would result in a safer (less handling), more secure (less time above ground), and more efficient (less cost) handling of SNM waste shipments.

The purpose of this EA is to assess the potential environmental impacts of the WCS December 2014 exemption request as modified through subsequent public interactions with the NRC. This EA does not approve or deny the requested action. A separate SER has been prepared in support of approval or denial of the requested action.

### *Environmental Impacts of the Proposed Action*

The NRC does not expect that significant changes in radiation hazards to workers would result from the proposed action. In performing the Direct Transfers, WCS would follow its State of Texas-approved radiation protection procedures (e.g., Radiation Safety Procedures, as low as is reasonably achievable [ALARA] Program) to keep radiological doses to workers within the State's regulatory limits (see Texas Administrative Code, Part 1, Chapter 336, Subchapter D, "Standards for Protection Against Radiation"). The WCS conducts this approved radiation protection program with an emphasis on maintaining radiological doses to workers and the general public ALARA.

To reduce the potential for inadvertent criticality, WCS would: (1) Be limited in the number of transportation packages transferred on a single conveyance to the CWF or the FWF using the total CSI of less than 50; (2) be required to have a maximum of only one transportation package open in the CWF and the FWF at the same time; and (3) be required to safely dispose of the waste in the CWF or the FWF within 24 hours.

The NRC staff does not expect the proposed action to result in substantive changes to the transportation impacts identified in prior EAs. The modified exemption request addresses only changes to onsite movement of SNM-bearing wastes. Direct Transfers to the CWF or the FWF would take place within an area under control by WCS, on pre-existing dedicated secure access roads, and with administrative controls (speed limits and enforced road blockages during Direct Transfers) intended to reduce the potential for, the severity of, and the potential consequences of accidents. Additionally, all Direct Transfers to the CWF and to the FWF would be escorted by radiation safety technicians and waste acceptance personnel. All other environmental impacts would be the same as those evaluated in the EAs that supported the previous versions of the NRC Order.

If WCS' modified exemption request is approved by the NRC staff, then the NRC would issue a new Order to supersede the 2014 Order, with new conditions added to address the modified exemption request. The WCS would continue to be permitted to possess SNM at the TSDF that meets the concentration limits and controls without an NRC part 70 license. The WCS would continue to be permitted to

possess at the TSDF, highly water soluble forms of SNM limited to amounts of SNM less than "special nuclear material of low strategic significance," as defined in 10 CFR 70.4.

The State of Texas regulates effluent releases and potential doses to the public under the WCS license. The State of Texas would continue to regulate the SNM at the WCS facility subject to the Order, as long as WCS complies with the NRC Order.

### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the WCS' modified exemption request. This would result in the NRC not issuing a new order that would supersede the 2014 Order (i.e., the "no action" alternative). Under that alternative, WCS would continue its currently approved program for transferring SNM wastes to either the CWF or the FWF for disposal. Under that program, WCS would offload waste packages from conveyances one at a time to stay within the current above-ground SNM possession limit. Such actions would require multiple trips (as many as needed to individually transfer waste packages) to the CWF or to the FWF. Compared to the proposed action, this would result in an increased handling of SNM wastes, with a subsequently increased possibility of accidents and radiological exposure. However, WCS would continue to conduct its state-approved radiation protection program to maintain radiological doses to workers and the general public ALARA.

### *Agencies and Persons Consulted*

On December 21, 2016, the staff consulted with the TCEQ, providing by email a copy of the draft EA for review and comment (ADAMS Accession No. ML17026A356). In an email dated January 12, 2017, the TCEQ stated that it had no comments of the draft EA (ADAMS Accession No. ML17026A360).

The proposed action does not involve the development or disturbance of additional land. Hence, the NRC has determined that the proposed action will not affect listed endangered or threatened species or their critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action does not have the potential to cause effects on historic properties even if they were present. Direct Transfers would take place on dedicated secure access roads within the WCS site, and no ground disturbing

activities are associated with the proposed action. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

### **III. Finding of No Significant Impact**

The NRC has reviewed WCS' December 4, 2014, request, as revised through subsequent public interactions between the NRC and WCS, to amend the 2014 Order. The NRC has found that effluent releases and potential radiological doses to the public are not anticipated to change as a result of this proposed action and that occupational exposures are expected to remain within regulatory limits and ALARA. On the basis of the environmental assessment, the NRC finds that the proposed action has no significant impact on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated: April 4, 2017.

For the U.S. Nuclear Regulatory Commission.

**Brian W. Smith,**

*Deputy Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2017-07505 Filed 4-12-17; 8:45 am]

**BILLING CODE 7590-01-P**

## **OFFICE OF PERSONNEL MANAGEMENT**

### **Submission for Review: Designation of Beneficiary, Federal Employees Retirement System, (FERS), SF 3102**

**AGENCY:** Office of Personnel Management.

**ACTION:** 60-Day Notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR), Designation of Beneficiary (FERS), SF 3102.

**DATES:** Comments are encouraged and will be accepted until June 12, 2017.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Retirement Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, Room 2347-E or sent via electronic mail to [Alberta.Butler@opm.gov](mailto:Alberta.Butler@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to [Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov).

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection (OMB No. 3206-0173): The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Standard Form 3102 is used by an employee or an annuitant covered under the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

#### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Designation of Beneficiary (FERS).

*OMB Number:* 3206-0173.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 3,888.

*Estimated Time per Respondent:* 15 minutes.

*Total Burden Hours:* 972.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017-07445 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Representative Payee Application, RI 20-7 and Information Necessary for a Competency Determination, RI 30-3

**AGENCY:** Office of Personnel Management.

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension without change, of a currently approved information collection request (ICR), Representative Payee Application, RI 20-7 and Information Necessary for a Competency Determination, RI 30-3.

**DATES:** Comments are encouraged and will be accepted until June 12, 2017. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to Retirement Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, Room 2347-E, or sent via electronic mail to [Alberta.Butler@opm.gov](mailto:Alberta.Butler@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson or sent via electronic mail to [Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov) or faxed to (202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection (OMB 3206-0140). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Form RI 20-7 is used by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30-3 collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

#### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Representative Payee Application.

*OMB Number:* 3206-0140.

*Frequency:* Annually.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 12,480 (RI 20-7); 250 (RI 30-3).

*Estimated Time per Respondent:* 30 minutes (RI 20-7); 60 minutes (RI 30-3).

*Total Burden Hours:* 6,490.

**Kathleen M. McGettigan,**

*Acting Director, Office of Personnel Management.*

[FR Doc. 2017-07447 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Application To Make Deposit or Redeposit (CSRS), Standard Form 2803, and Application To Make Service Credit Payment for Civilian Service (FERS), Standard Form 3108

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension without change of a currently approved information collection (ICR), Application to Make Deposit or Redeposit (CSRS) Standard Form (SF) 2808 and Application to Make Service

Credit Payment for Civilian Service (FERS), SF 3108.

**DATES:** Comments are encouraged and will be accepted until June 12, 2017.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Retirement Services, 1900 E Street NW., Room 2347-E, Washington, DC 20415, Attention: Alberta Butler or sent via electronic mail to [Alberta.Butler@opm.gov](mailto:Alberta.Butler@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to [Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov) or faxed to (202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 (Pub. Law 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection (OMB No. 3206-0134). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Standard Form (SF) 2803, Application to Make Deposit or Redeposit (CSRS) and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was not subject to retirement deductions which were subsequently refunded to the applicant.

### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application to Make Deposit or Redeposit (CSRS), and Application to Make Service Credit Payment for Civilian Service (FERS).

*OMB Number:* 3206-0134.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 150.

*Estimated Time per Respondent:* 30 minutes.

*Total Burden Hours:* 75.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017-07443 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

### OFFICE OF PERSONNEL MANAGEMENT

#### Submission for Review: Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30-9

**AGENCY:** Office of Personnel Management.

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension without change of a currently approved information collection (ICR), Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30-9.

**DATES:** Comments are encouraged and will be accepted until June 12, 2017.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to Retirement Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, Room 2347-E, or sent via electronic mail to [Alberta.Butler@opm.gov](mailto:Alberta.Butler@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to

[Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov) or faxed to (202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection (OMB No. 3206-0138). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Form RI 30-9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity informs disability annuitants of their right to request restoration under title 5, U.S.C. 8337 and 8455. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity.

*OMB:* 3206-0138.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 200.

*Estimated Time per Respondent:* 60 minutes.

*Total Burden Hours:* 200.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017-07446 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

**OFFICE OF PERSONNEL  
MANAGEMENT****Submission for Review: CSRS/FERS  
Documentation in Support of Disability  
Retirement Application, SF 3112**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** 60-Day notice and request for  
comments.

**SUMMARY:** The Retirement Services,  
Office of Personnel Management (OPM)  
offers the general public and other  
Federal agencies the opportunity to  
comment on an extension without  
change, of a currently approved  
information collection request (ICR),  
CSRS/FERS Documentation in Support  
of Disability Retirement Application, SF  
3112.

**DATES:** Comments are encouraged and  
will be accepted until June 12, 2017.

**ADDRESSES:** Interested persons are  
invited to submit written comments on  
the proposed information collection to  
Retirement Services, U.S. Office of  
Personnel Management, 1900 E Street  
NW., Washington, DC 20415, Attention:  
Alberta Butler, Room 2347-E or sent via  
electronic mail to [Alberta.Butler@opm.gov](mailto:Alberta.Butler@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** A  
copy of this ICR with applicable  
supporting documentation, may be  
obtained by contacting the Retirement  
Services Publications Team, Office of  
Personnel Management, 1900 E Street  
NW., Room 3316-L, Washington, DC  
20415, Attention: Cyrus S. Benson, or  
sent via electronic mail to  
[Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov) or faxed to  
(202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As  
required by the Paperwork Reduction  
Act of 1995 (Pub. L. 104-13, 44 U.S.C.  
chapter 35) as amended by the Clinger-  
Cohen Act (Pub. L. 104-106), OPM is  
soliciting comments for this collection  
(OMB No. 3206-0228). The Office of  
Management and Budget is particularly  
interested in comments that:

1. Evaluate whether the proposed  
collection of information is necessary  
for the proper performance of functions  
of the agency, including whether the  
information will have practical utility;
2. Evaluate the accuracy of the  
agency's estimate of the burden of the  
proposed collection of information,  
including the validity of the  
methodology and assumptions used;
3. Enhance the quality, utility, and  
clarity of the information to be  
collected; and
4. Minimize the burden of the  
collection of information on those who

are to respond, including through the  
use of appropriate automated,  
electronic, mechanical, or other  
technological collection techniques or  
other forms of information technology,  
*e.g.*, permitting electronic submissions  
of responses.

Standard Form 3112, CSRS/FERS  
Documentation in Support of Disability  
Retirement Application collects  
information from applicants for  
disability retirement so that OPM can  
determine whether to approve a  
disability retirement under title 5,  
U.S.C. Sections 8337 and 8455. The  
applicant will only complete Standard  
Forms 3112A and 3112C. Standard  
Forms 3112B, 3112D and 3112E will be  
completed by the immediate supervisor  
and the employing agency of the  
applicant.

**Analysis**

*Agency:* Retirement Operations,  
Retirement Services, Office of Personnel  
Management.

*Title:* CSRS/FERS Documentation in  
Support of Disability Retirement  
Application.

*OMB Number:* 3206-0228.

*Frequency:* On occasion.

*Affected Public:* Individuals or  
Households.

*Number of Respondents:* SF 3112A =  
1,350; SF 3112C = 12,100.

*Estimated Time per Respondent:* SF  
3112A = 30 minutes; SF 3112C = 60  
minutes.

*Total Burden Hours:* 12,775.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017-07460 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

**OFFICE OF PERSONNEL  
MANAGEMENT****Submission for Review: Notification of  
Application for Refund of Retirement  
Deductions, SF 3106 and Current/  
Former Spouse(s) Notification of  
Application for Refund of Retirement  
Deductions Under FERS, SF 3106A**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** 60-Day notice and request for  
comments.

**SUMMARY:** The Retirement Services,  
Office of Personnel Management (OPM)  
offers the general public and other  
Federal agencies the opportunity to  
comment on an extension, without  
change, of a currently approved  
information collection (ICR),  
Notification of Application for Refund

of Retirement Deductions, SF 3106 and  
SF 3106A.

**DATES:** Comments are encouraged and  
will be accepted until June 12, 2017.

**ADDRESSES:** Interested persons are  
invited to submit written comments on  
the proposed information collection to  
Retirement Services, U.S. Office of  
Personnel Management, 1900 E Street  
NW., Washington, DC 20415, Attention:  
Alberta Butler, Room 2347-E, or sent  
via electronic mail to [Alberta.Butler@opm.gov](mailto:Alberta.Butler@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** A  
copy of this ICR with applicable  
supporting documentation, may be  
obtained by contacting the Retirement  
Services Publications Team, Office of  
Personnel Management, 1900 E Street  
NW., Room 3316-L, Washington, DC  
20415, Attention: Cyrus S. Benson, or  
sent via electronic mail to  
[Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov) or faxed to  
(202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As  
required by the Paperwork Reduction  
Act of 1995 (Pub. L. 104-13, 44 U.S.C.  
chapter 35) as amended by the Clinger-  
Cohen Act (Pub. L. 104-106), OPM is  
soliciting comments for this collection  
(OMB No. 3206-0170). The Office of  
Management and Budget is particularly  
interested in comments that:

1. Evaluate whether the proposed  
collection of information is necessary  
for the proper performance of functions  
of the agency, including whether the  
information will have practical utility;
2. Evaluate the accuracy of the  
agency's estimate of the burden of the  
proposed collection of information,  
including the validity of the  
methodology and assumptions used;
3. Enhance the quality, utility, and  
clarity of the information to be  
collected; and
4. Minimize the burden of the  
collection of information on those who

are to respond, including through the  
use of appropriate automated,  
electronic, mechanical, or other  
technological collection techniques or  
other forms of information technology,  
*e.g.*, permitting electronic submissions  
of responses.

Standard Form 3106, Application for  
Refund of Retirement Deductions under  
FERS is used by former Federal  
employees under FERS, to apply for a  
refund of retirement deductions  
withheld during Federal employment,  
plus any interest provided by law.  
Standard Form 3106A, Current/Former  
Spouse(s) Notification of Application  
for Refund of Retirement Deductions  
Under FERS, is used by refund  
applicants to notify their current/former  
spouse(s) that they are applying for a

refund of retirement deductions, which is required by law.

**Analysis**

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application for Refund of Retirement Deductions, SF 3106; Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS, SF 3106A.

*OMB Number:* 3206-0170.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* SF 3106 = 8,000; SF 3106A = 6,400.

*Estimated Time per Respondent:* SF 3106 = 30 minutes; SF 3106A = 5 minutes.

*Total Burden Hours:* 4,533.

**Kathleen M. McGettigan,**

*Acting Director, Office of Personnel Management.*

[FR Doc. 2017-07448 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

**OFFICE OF PERSONNEL MANAGEMENT**

**Excepted Service**

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from December 1, 2016 to December 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202-606-2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not

codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at [www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/). OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

**Schedule A**

No schedule A authorities to report during December 2016.

**Schedule B**

No schedule B authorities to report during December 2016.

The following Schedule C appointing authorities were approved during December 2016.

Agency name	Organization name	Position title	Authorization No.	Effective date	
DEPARTMENT OF DEFENSE .....	Office of Assistant Secretary of Defense (Public Affairs).	Chief Speechwriter .....	DD170014	12/08/2016	
	Office of Deputy Under Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant for Afghanistan, Pakistan, and Central Asia.	DD170020	12/20/2016	
	Office of the Secretary of Defense	Advance Officer .....	DD170029	12/21/2016	
		Confidential Assistant .....	DD170022	12/22/2016	
		Protocol Officer (2) .....	DD170030	12/21/2016	
			DD170023	12/28/2016	
			DD170026	12/28/2016	
			DD170024	12/28/2016	
	DEPARTMENT OF ENERGY .....	Washington Headquarters Services	Chief of Strategic Initiatives .....	DE170015	12/20/2016
		Office of Assistant Secretary for Energy Efficiency and Renewable Energy.			
Loan Programs Office .....		Special Advisor for Congressional and Intergovernmental Affairs.	DE170032	12/20/2016	
DEPARTMENT OF HOMELAND SECURITY.	Office of the Chief of Staff .....	Special Assistant .....	DM170043	12/15/2016	
	Office of the Assistant Secretary for Policy.	Special Assistant (2) .....	DM170044	12/15/2016	
			DM170045	12/15/2016	
	Office of the Assistant Secretary for Intergovernmental Affairs.	Intergovernmental Affairs Coordinator.	DM170046	12/22/2016	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary .....	Chief of Staff/Senior Counsel .....	DU170003	12/12/2016	
DEPARTMENT OF JUSTICE .....	Office of Public Affairs .....	Speechwriter .....	DJ170002	12/12/2016	
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Office of Commissioners .....	Counsel .....	SH170001	12/21/2016	
DEPARTMENT OF STATE .....	Bureau of Arms Control, Verification, and Compliance.	Public Affairs Specialist (2) .....	DS170008	12/06/2016	
		.....	DS170006	12/08/2016	
	Bureau of Energy Resources .....	Special Assistant .....	DS170010	12/06/2016	
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Staff Assistant .....	DS170015	12/13/2016	
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary .....	Director of Advance .....	DT170027	12/22/2016	

The following Schedule C appointing authorities were revoked during December 2016.

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF AGRICULTURE	Office of Communications .....	Press Secretary .....	DA150158	12/02/2016
	Office of the General Counsel .....	Senior Counselor .....	DA160027	12/08/2016
	Office of the Assistant Secretary for Congressional Relations.	Legislative Analyst .....	DA160009	12/09/2016
	Office of the Secretary .....	Advisor to the Secretary for Special Projects.	DA160129	12/10/2016
	Office of the Under Secretary for Rural Development.	Chief of Staff .....	DA160084	12/24/2016
	Farm Service Agency .....	State Executive Director—Vermont Director .....	DA130197	12/31/2016
	Office of Small and Disadvantaged Business Utilization.		DA160125	12/31/2016
DEPARTMENT OF COMMERCE ...	Rural Housing Service .....	State Director—Illinois .....	DA130131	12/31/2016
		State Director—Pennsylvania .....	DA130133	12/31/2016
	Office of the Assistant Secretary for Economic Development.	Director, Office of Innovation and Entrepreneurship.	DC140086	12/09/2016
COMMISSION ON CIVIL RIGHTS	Office of the Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Senior Director .....	DC150016	12/20/2016
	Office of Legislative and Intergovernmental Affairs.	Associate Director of Legislative and Intergovernmental Affairs.	DC140164	12/24/2016
	Office of Commissioners .....	Special Assistant to the Commissioner.	CC090002	12/27/2016
DEPARTMENT OF THE AIR FORCE.	Office of the Under Secretary .....	Special Assistant .....	DF150011	12/27/2016
FEDERAL COMMUNICATIONS COMMISSION.	Wireline Competition Bureau .....	Public Affairs Specialist .....	FC140009	12/03/2016
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Media Relations .....	Director of Outreach and Strategy ..	FC140011	12/24/2016
	Office of the Assistant Secretary for Legislation.	Special Assistant .....	DH160002	12/10/2016
	Office of the National Coordinator for Health Information Technology.	Director of Communications .....	DH160056	12/16/2016
	Office of the Assistant Secretary for Public Affairs.	Communications Advisor .....	DH160150	12/23/2016
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Housing .....	Senior Policy Advisor .....	DU150008	12/13/2016
	Office of Public Affairs .....	Director of Speechwriting (2) .....	DU160040	12/16/2016
			DU150020	12/16/2016
			Special Advisor for Digital Strategy (2).	DU140050
DEPARTMENT OF THE INTERIOR	Secretary's Immediate Office .....	Deputy Director—Advance .....	DU160039	12/30/2016
DEPARTMENT OF JUSTICE .....	Office of the Attorney General .....	Special Assistant .....	DI160016	12/28/2016
	Office of Public Affairs .....	Special Assistant .....	DJ160019	12/10/2016
OFFICE OF PERSONNEL MANAGEMENT.	Office of Public Affairs .....	Deputy Speechwriter .....	DJ150122	12/11/2016
	Office of the Director .....	Deputy Chief of Staff .....	PM160013	12/10/2016
SMALL BUSINESS ADMINISTRATION.	Office of Fields Operations .....	Senior Advisor to the Director .....	PM160014	12/10/2016
		Regional Administrator, Region IV	SB110027	12/30/2016
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary .....	Special Assistant for Scheduling and Advance.	DT150047	12/24/2016

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

**Kathleen M. McGettigan,**  
Acting Director, Office of Personnel Management.

[FR Doc. 2017–07462 Filed 4–12–17; 8:45 am]

**BILLING CODE 6325–39–P**

#### **OFFICE OF PERSONNEL MANAGEMENT**

#### **Submission for Review: Designation of Beneficiary: Civil Service Retirement System (CSRS), SF 2808**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other

Federal agencies the opportunity to comment on an extension, without change of a currently approved information collection request (ICR), Designation of Beneficiary: Civil Service Retirement System (CSRS), SF 2808.

**DATES:** Comments are encouraged and will be accepted until May 15, 2017.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206-0142) was previously published in the **Federal Register** on March 3, 2017, at 82 FR 12474, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Standard Form 2808 is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

#### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* We Need the Social Security Number of the Person Named Below.

*OMB Number:* 3206-0144.

*Frequency:* On occasion.

*Affected Public:* Individual or Households.

*Number of Respondents:* 2,000.

*Estimated Time per Respondent:* 15 minutes.

*Total Burden Hours:* 500 hours.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017-07444 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

#### OFFICE OF PERSONNEL MANAGEMENT

##### Submission for Review: Annuity Supplement Earnings Report, RI 92-22

**AGENCY:** Office of Personnel Management.

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR), Annuity Supplement Earnings Report, RI 92-22.

**DATES:** Comments are encouraged and will be accepted until June 12, 2017.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to Retirement Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, Room 2347-E, or sent by email to [Alberta.Butler@opm.gov](mailto:Alberta.Butler@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, U.S. Office of Personnel Management, 1900 E Street NW., Room 3316-L Washington, DC 20415, Attention: Cyrus S. Benson or sent by email to [Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov) or faxed to (202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection (OMB No. RI92-22). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary

for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Form RI 92-22, Annuity Supplement Earnings Report, is used each year to obtain the earned income of Federal Employees Retirement System (FERS) annuitants receiving an annuity supplement. The annuity supplement is paid to eligible FERS annuitants who are not retired on disability and are not yet age 62. The supplement approximates the portion of a full career Social Security benefit earned while under FERS and ends at age 62. Like Social Security benefits, the annuity supplement is subject to an earnings limitation.

#### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Annuity Supplement Earnings Report.

*OMB Number:* 3206-0194.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 13,000.

*Estimated Time per Respondent:* 15 minutes.

*Total Burden Hours:* 3,250.

**Kathleen M. McGettigan,**

*Acting Director, Office of Personnel Management.*

[FR Doc. 2017-07461 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

**OFFICE OF PERSONNEL  
MANAGEMENT****Submission for Review: Application for Refund of Retirement Deductions (CSRS), SF 2802 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System, SF 2802A**

**AGENCY:** Office of Personnel Management.

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change of a currently approved information collection (ICR), Application For Refund of Retirement Deductions, Civil Service Retirement System, SF 2802 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System, SF 2802A.

**DATES:** Comments are encouraged and will be accepted until June 12, 2017.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, Room 2347-E, or sent via electronic mail to [Alberta.Butler@opm.gov](mailto:Alberta.Butler@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, U.S. Office of Personnel Management, 1900 E Street NW., Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to [Cyrus.Benson@opm.gov](mailto:Cyrus.Benson@opm.gov) or faxed to (202) 606-0910.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection (OMB No. 3206-0128). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Standard Form 2802 is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. Standard Form 2802A is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

**Analysis**

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application For Refund of Retirement Deductions (CSRS)/Current/Former Spouse's Notification of Application for Refund of Retirement Deductions under the Civil Service Retirement System.

*OMB Number:* 3206-0128.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* SF 2802 = 3,741; SF 2802A = 3,389.

*Estimated Time per Respondent:* SF 2802 = 1 hour; SF 2802A = 15 minutes.

*Total Burden Hours:* 4,588.

U.S. Office of Personnel Management.

**Kathleen M. McGettigan,**

*Acting Director.*

[FR Doc. 2017-07449 Filed 4-12-17; 8:45 am]

**BILLING CODE 6325-38-P**

**POSTAL REGULATORY COMMISSION**

**[Docket Nos. MC2017-106 and CP2017-153; MC2017-107 and CP2017-154; MC2017-108 and CP2017-155; MC2017-109 and CP2017-156]**

**New Postal Products**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing,

invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* April 14, 2017.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Introduction
- II. Docketed Proceeding(s)

**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable

statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s)*.: MC2017–106 and CP2017–153; *Filing Title*: Request of the United States Postal Service to Add Priority Mail Express Contract 46 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date*: April 6, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Kenneth E. Moeller; *Comments Due*: April 14, 2017.

2. *Docket No(s)*.: MC2017–107 and CP2017–154; *Filing Title*: Request of the United States Postal Service to Add Priority Mail Contract 304 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date*: April 6, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Kenneth E. Moeller; *Comments Due*: April 14, 2017.

3. *Docket No(s)*.: MC2017–108 and CP2017–155; *Filing Title*: Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 16 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date*: April 6, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Erin Mahagan; *Comments Due*: April 14, 2017.

4. *Docket No(s)*.: MC2017–109 and CP2017–156; *Filing Title*: Request of the United States Postal Service to Add First-Class Package Service Contract 75 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date*: April 6, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Erin Mahagan; *Comments Due*: April 14, 2017.

This notice will be published in the **Federal Register**.

**Ruth Ann Abrams,**  
*Acting Secretary.*

[FR Doc. 2017–07437 Filed 4–12–17; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2017–157]

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* April 17, 2017.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

#### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s)*.: CP2017–157; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: April 7, 2017; *Filing Authority*: 39 CFR 3015.5.; *Public Representative*: Curtis E. Kidd; *Comments Due*: April 17, 2017.

This notice will be published in the **Federal Register**.

**Stacy L. Ruble,**  
*Secretary.*

[FR Doc. 2017–07496 Filed 4–12–17; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* April 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority*

*Mail Express, Priority Mail, & First-Class Package Service Contract 16 to Competitive Product List.* Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017-108, CP2017-155.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2017-07424 Filed 4-12-17; 8:45 am]

BILLING CODE 7710-12-P

## POSTAL SERVICE

### Product Change—Priority Mail Express Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* April 13, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth A. Reed, 202-268-3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 46 to Competitive Product List.* Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017-106, CP2017-153.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2017-07425 Filed 4-12-17; 8:45 am]

BILLING CODE 7710-12-P

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* April 13, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth A. Reed, 202-268-3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 6, 2017,

it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 75 to Competitive Product List.* Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017-109, CP2017-156.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2017-07423 Filed 4-12-17; 8:45 am]

BILLING CODE 7710-12-P

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* April 13, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth A. Reed, 202-268-3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 304 to Competitive Product List.* Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017-107, CP2017-154.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2017-07426 Filed 4-12-17; 8:45 am]

BILLING CODE 7710-12-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80397; File No. SR-NYSEMKT-2017-18]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending Its Price List

April 7, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March

28, 2017, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to provide that the monthly DMM credit for certain securities will be prorated to the number of trading days in a month that a security is assigned to a DMM. The Exchange proposes to implement this change to its Price List effective March 29, 2017. The proposed change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Price List to provide that the monthly DMM credit for certain securities will be prorated to the number of trading days in a month that a security is assigned to a DMM. The proposed change is the same as that adopted by the Exchange's affiliate New York Stock Exchange LLC for its DMMs.<sup>4</sup>

The proposed changes would apply to both credits in transactions in securities priced \$1.00 or more and those priced below \$1.00.

<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 73021 (September 9, 2014), 79 FR 55047 (September 15, 2014) (SR-NYSE-2014-47).

The Exchange proposes to implement this change to its Price List effective March 29, 2017.

Currently, DMMs are eligible for a monthly credit of \$100 for each security whose consolidated average daily volume or CADV during the current month is less than 50,000 shares per day and for which the DMM has met its 10% quoting requirement in that month. The flat dollar credit supplements the DMM credit in securities that do not trade actively and is applicable to all Exchange-listed securities regardless of price.

The Exchange proposes to revise its Price List to provide that the rebate would be prorated to the number of trading days in a month that a stock is assigned to a DMM. The Exchange believes prorating the rebate to the number of trading days that a stock is assigned to a DMM would [sic] to ensure that the monthly rebate has a nexus to the time for which a DMM has affirmative obligations for that stock pursuant to Rule 104—Equities. For example, if a stock is assigned to more than one DMM unit within a month, such as when a stock is transferred temporarily from one DMM to another and then returned to the original DMM, the Exchange does not believe that it is appropriate that both DMMs that were assigned that stock in a given month should both be eligible for the full monthly rebate.

Similarly, if a stock begins trading at the Exchange mid-month, because of an initial public offering or transfer of a listed security from another exchange, the Exchange does not believe it is appropriate for a DMM to receive a full monthly credit. For example, in a month with 20 trading days, assume a less active security transfers from DMM 1 to DMM 2 after the 15th trading day. The DMM monthly rebate would be prorated for the two DMM firms as follows: DMM 1 would be rebated \$75 (15 assigned trading days/20 trading days in the month  $\times$  \$100) and DMM 2 would be rebated \$25 (5 assigned trading days/20 trading days in the month  $\times$  \$100).

The Exchange believes that prorating the rebate for the number of trading days in a month that a stock is assigned to a DMM is appropriate and would ensure that the DMM with responsibility for the stock receives the appropriate rebate for the responsibilities performed for that symbol in the month.<sup>5</sup>

\* \* \* \* \*

<sup>5</sup> The Exchange also proposes a non-substantive change to the heading "Fees and Credits applicable to Designated Market Makers on Transactions in

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed prorating of the DMM monthly rebate is reasonable because it would provide a nexus between the rebate paid to a DMM and the number of days that a DMM has been assigned a stock. The Exchange therefore believes that the proposed prorating of the monthly DMM rebate is equitable and not unfairly discriminatory because it directly ties the monthly rebate to the number of trading days for which a DMM has regulatory responsibility for a stock pursuant to Rule 104—Equities. The Exchange also believes that the proposed prorating is equitable and not unfairly discriminatory because all DMMs would be treated the same.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

## B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>8</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would not burden competition because it would be applicable to DMMs only and ensures that an existing rebate is associated more closely with when a DMM is assigned a stock, which may be shorter than a full month.

The Exchange notes that it operates in a highly competitive market in which

Securities with a Per Share Price of \$1.00 or more" to capitalize the letter "a" in "applicable."

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>8</sup> 15 U.S.C. 78f(b)(8).

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 and rebates 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 and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2017-18 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-NYSEMKT-2017-18. 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-NYSEMKT-2017-18, and should be submitted on or before May 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-07454 Filed 4-12-17; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80394; File No. SR-DTC-2017-801]

#### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Advance Notice To Address and Update Practices and Policies With Respect to the Credit Risk Rating Matrix and Make Other Changes

April 7, 2017.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> notice is hereby given that on March 22, 2017, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the advance notice SR-DTC-2017-801 ("Advance Notice") as described in Items I, II and III below, which Items have been prepared by DTC.<sup>3</sup> The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of proposed modifications to DTC's Rules, By-Laws and Organization Certificate ("Rules").<sup>4</sup> The proposed rule change would amend Rules 1 and 2 in order to (i) address and update DTC's practices and policies with respect to the existing matrix (hereinafter referred to as the "Credit Risk Rating Matrix" or "CRRM"), which was, as described in

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> On March 22, 2017, DTC filed this Advance Notice as a proposed rule change (SR-DTC-2017-002) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4, 17 CFR 240.19b-4. A copy of the proposed rule change is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

<sup>4</sup> Capitalized terms not defined herein are defined in the Rules, available at [www.dtcc.com/~media/Files/Downloads/legal/rules/dtc\\_rules.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf).

an earlier DTC rule filing,<sup>5</sup> developed by DTC to assign a credit rating to certain Participants ("CRRM-Rated Participants") by evaluating the risks posed by CRRM-Rated Participants to DTC and its Participants from providing services to these CRRM-Rated Participants and (ii) make other amendments to the Rules to provide more transparency and clarity regarding DTC's current ongoing membership monitoring process.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

##### (A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments relating to this proposal have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

##### (B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

###### Nature of the Proposed Change

The proposed rule change would amend Rules 1 and 2 in order to (i) address and update DTC's practices and policies with respect to the CRRM and (ii) provide more transparency and clarity regarding DTC's current membership monitoring process. In this regard, the proposed rule change would (i) add proposed definitions for the terms "Credit Risk Rating Matrix" and "Watch List" to Rule 1 (Definitions), as discussed below and (ii) amend Rule 2 (Participants and Pledges) to (A) clarify a provision in Section 1 relating to the types of information a Participant must provide to DTC upon DTC's request for the Participant to demonstrate its

<sup>5</sup> See Securities Exchange Act Release No. 53655 (April 14, 2006), 71 FR 20428 (April 20, 2006) (SR-DTC-2006-03) (order of the Commission) approving a proposed rule change ("2006 Rule Change") of DTC to amend the criteria used by DTC to place Participants on surveillance status, including, but not limited to DTC's application of the CRRM and the placement of lower rated CRRM-Rated Participants on an internal list in order to be monitored more closely ("Watch List").

satisfactory financial condition and operational capability, including its risk management practices with respect to services of DTC utilized by the Participant for another Person and (B) add a new Section 10 to include provisions relating to the monitoring, surveillance and review of Participants, including, but not limited to, the application of the CRRM and proposed enhancements to the CRRM, as further discussed below.

#### (i) Background

DTC occupies an important role in the securities settlement system by, among other things, providing services for the settlement of book-entry transfer and pledge of interests in eligible deposited securities and net funds settlement, in connection with which Participants may incur net funds settlement obligations to DTC. DTC uses the CRRM, the Watch List and the enhanced surveillance to manage and monitor default risks of Participants on an ongoing basis, as discussed below. The level and frequency of such monitoring for a Participant is determined by the Participant's risk of default as assessed by DTC. Participants that are deemed by DTC to pose a heightened risk to DTC and its Participants are subject to closer and more frequent monitoring.

#### Existing Credit Risk Rating Matrix

Pursuant to the 2006 Rule Change, all Participants that are either U.S. broker-dealers or U.S. banks are assigned a rating generated solely based on quantitative factors by entering financial data of those Participants into an internally generated credit rating matrix, *i.e.*, the CRRM.<sup>6</sup> All other types of Participants are monitored by credit risk staff using financial criteria deemed

<sup>6</sup> See 2006 Rule Change, SR-DTC-2006-03, 71 FR 20428, which explained that the ratings assigned by the CRRM were generated using financial data extracted from standard regulatory reports of U.S. broker-dealers and banks. A small number of U.S. banks which submitted standard regulatory reports were not assigned a rating because they did not take deposits or make loans, and therefore the regulatory reports of these banks did not contain information on asset quality and/or liquidity, which was a data component used in the CRRM. *Id.* However, the 2006 Rule Change provided DTC with discretion to continue to "evaluate the matrix methodology and its effectiveness and make such changes as it deems prudent and practicable within such time frames as it determines to be appropriate." *Id.* DTC has continued to evaluate the CRRM and has determined that the CRRM is the most effective method available to it to evaluate the default risk presented by any U.S. bank that submits regulatory reports, including a bank whose reports exclude certain data components as mentioned above. Accordingly, DTC applies the CRRM to assign ratings to any U.S. bank that submits regulatory reports, including those that were not covered by the CRRM in 2006, as reflected in the proposed rule change.

relevant by DTC but would not be assigned a rating by the CRRM.<sup>7</sup>

The 2006 Rule Change explained that credit risk staff could downgrade a particular Participant's credit rating based on various qualitative factors. An example of such qualitative factors might be that the Participant in question received a qualified audit opinion on its annual audit. DTC noted in the 2006 Rule Change that in order to protect DTC and its other Participants, it was important that credit risk staff maintain the discretion to downgrade a Participant's credit rating on the CRRM and thus subject the Participant to closer monitoring.

The current CRRM is comprised of two credit rating models—one for the U.S. broker-dealers and one for the U.S. banks—and generates credit ratings for the relevant Participants based on a 7-point rating system, with "1" being the strongest credit rating and "7" being the weakest credit rating.

Over time, the current CRRM has not kept pace with DTC's evolving Participant membership base and heightened expectations from regulators and stakeholders for robustness of financial models. Specifically, the current CRRM only generates credit ratings for those Participants that are U.S. banks or U.S. broker-dealers that file standard reports with their regulators, which currently comprise 80% of Participants; foreign banks and trust companies currently account for 5% of Participants.<sup>8</sup> The number of Participants that are foreign banks or trust companies increased from 12 in 2012 to 13 in 2017, and is expected to continue to grow over the coming years. Foreign banks and trust companies are typically large global financial institutions that have complex businesses and conduct a high volume of activities. Although foreign banks and trust companies are not currently rated by the CRRM, they are monitored by DTC's credit risk staff using financial criteria deemed relevant by DTC and can be placed on the Watch List if they experience a financial change that presents risk to DTC. Given the increase in the number of foreign bank Participants in recent years, there is a need to formalize DTC's credit risk evaluation process of the foreign bank or trust company Participants by assigning

<sup>7</sup> In the 2006 Rule Change, DTC noted that these Participants would be monitored by credit risk staff by reviewing similar criteria as those reviewed for Participants included on the matrix but such review would occur outside of the matrix process. *Id.*

<sup>8</sup> As of March 16, 2017, there are 251 Participants, of which 50 (or 20%) are U.S. banks, 151 (or 60%) are U.S. broker-dealers and 13 (or 5%) are foreign banks or trust companies.

credit ratings to them in order to better facilitate the comparability of credit risks among Participants.<sup>9</sup>

As mentioned above, a Participant's credit rating is currently based solely upon quantitative factors. It is only after the CRRM has generated a credit rating with respect to a Participant that such Participant's credit rating may be downgraded manually by credit risk staff, after taking into consideration relevant qualitative factors. The inability of the current CRRM to take into account qualitative factors requires frequent and manual overrides by credit risk staff, which may result in inconsistent and/or incomplete credit ratings for Participants.

Furthermore, the current CRRM uses a relative scoring approach and relies on peer grouping of Participants to calculate the credit rating of a Participant. This approach is not ideal because a Participant's credit rating can be affected by changes in its peer group even if the Participant's financial condition is unchanged.

#### Proposed Credit Risk Rating Matrix Enhancements

To improve the coverage and the effectiveness of the current CRRM, DTC is proposing three enhancements to the CRRM. The first proposed enhancement would expand the scope of CRRM coverage by enabling the CRRM to generate credit ratings for Participants that are foreign banks or trust companies and that have audited financial data that is publicly available. The second proposed enhancement would incorporate qualitative factors into the CRRM and therefore is expected to reduce the need and the frequency of manual overrides of Participant credit ratings. The third enhancement would replace the relative scoring approach currently used by CRRM with a statistical approach to estimate the absolute probability of default of each Participant.

##### A. Enable the CRRM To Generate Credit Ratings for Foreign Bank or Trust Company Participants

The current CRRM is comprised of two credit rating models—one for the U.S. broker-dealers and one for the U.S. banks. DTC is proposing to enhance the CRRM by adding an additional credit

<sup>9</sup> DTC noted in the 2006 Rule Change that the CRRM is applied across DTC and its affiliated clearing agencies, NSCC and FICC. Specifically, in order to run the CRRM, credit risk staff uses the financial data of the applicable DTC Participants in addition to data of applicable members of NSCC and FICC. In this way, each applicable DTC Participant is rated against other applicable members of NSCC and FICC. See 2006 Rule Change, SR-DTC-2006-03, 71 FR 20428.

rating model for the foreign banks and trust companies. The additional model would expand the scope of Participants to which the CRRM would apply to include foreign banks and trust companies that have audited financial data that is publicly available. The CRRM credit rating of a foreign bank or trust company that is a Participant would be based on quantitative factors, including size, capital, leverage, liquidity, profitability and growth, and qualitative factors, including market position and sustainability, information reporting and compliance, management quality, capital management and business/product diversity. By enabling the CRRM to generate credit ratings for these Participants, the enhanced CRRM would provide more comprehensive credit risk coverage of DTC's membership base.

With the proposed enhancement to the CRRM as described above, applicable foreign bank or trust company Participants would be included in the CRRM process and be evaluated more effectively and efficiently because financial data with respect to these foreign bank or trust company Participants could be extracted from data sources in an automated form.<sup>10</sup>

After the proposed enhancement, CRRM would be able to generate credit ratings on an ongoing basis for all Participants that are U.S. banks, U.S. brokers-dealers and foreign banks and trust companies, which together represent approximately 85% of Participants.<sup>11</sup>

#### *B. Incorporate Qualitative Factors Into the CRRM*

In addition, as proposed, the enhanced CRRM would blend both qualitative factors and quantitative factors to produce a credit rating for each applicable Participant in relation to the Participant's credit risk. For U.S. and foreign banks and trust companies, the enhanced CRRM would use a 70/30 weighted split between quantitative and qualitative factors to generate credit ratings. For U.S. broker-dealers, the weight split between quantitative and qualitative factors would be 60/40.

<sup>10</sup> In the 2006 Rule Change, DTC noted that these Participants would be monitored by credit risk staff by reviewing similar criteria as those reviewed for Participants included on the CRRM, but such review would occur outside of the CRRM process. *Id.*

<sup>11</sup> As of March 16, 2017, there are 37 Participants that would not be rated by the enhanced CRRM, as proposed, because they are central securities depositories, securities exchanges, government sponsored entities, central counterparties, central banks and U.S. trust companies that do not file Call Reports (as defined below).

These weight splits have been chosen by DTC based on the industry best practice as well as research and sensitivity analysis conducted by DTC. DTC would review and adjust the weight splits as well as the quantitative and qualitative factors, as needed, based on recalibration of the CRRM to be conducted by DTC approximately every three to five years.

Although there are advantages to measuring credit risk quantitatively, quantitative evaluation models alone are incapable of fully capturing all credit risks. Certain qualitative factors may indicate that a Participant is or will soon be undergoing financial distress, which may in turn signal a higher default exposure to DTC and its other Participants. As such, a key enhancement being proposed to the CRRM is the incorporation of relevant qualitative factors into each of the three credit rating models mentioned above. By including qualitative factors in the three credit rating models, the enhanced CRRM would capture risks that would otherwise not be accounted for with quantitative factors alone.<sup>12</sup> Adding qualitative factors to the CRRM would not only enable it to generate more consistent and comprehensive credit ratings for applicable Participants, but it would also help reduce the need and frequency of manual credit rating overrides by the credit risk staff because overrides would likely only be required under more limited circumstances.<sup>13</sup>

#### *C. Shifting From Relative Scoring to Absolute Scoring*

As proposed, the enhanced CRRM would use an absolute scoring approach and rank each Participant based on its individual probability of default rather than the relative scoring approach that is currently in use. This proposed change is designed to have a Participant's CRRM-generated credit rating reflect an absolute measure of the Participant's default risk and eliminate any potential distortion of a

<sup>12</sup> The initial set of qualitative factors that would be incorporated into the CRRM includes (a) for U.S. broker dealers, market position and sustainability, management quality, capital management, liquidity management, geographic diversification, business/product diversity and access to funding, (b) for U.S. banks, environment, compliance/litigation, management quality, liquidity management and parental demands and (c) for foreign banks and trust companies, market position and sustainability, information reporting and compliance, management quality, capital management and business/product diversity.

<sup>13</sup> Once a Participant is assigned a credit rating, if circumstances warrant, credit risk staff would still have the ability to override the CRRM-issued credit rating by manually downgrading such rating as they do today. To ensure a conservative approach, the CRRM-issued credit ratings cannot be manually upgraded.

Participant's credit rating from the Participant's peer group that may occur under the relative scoring approach used in the existing CRRM.

#### *D. Watch List and Enhanced Surveillance*

In addition to the Watch List, DTC also maintains an enhanced surveillance list (referenced herein and in the proposed rule text as "enhanced surveillance") for membership monitoring. The enhanced surveillance list is generally used when Participants are undergoing drastic and unexpected changes in their financial conditions or operation capabilities and thus are deemed by DTC to be of the highest risk level and/or warrant additional scrutiny due to DTC's ongoing concerns about these Participants. Accordingly, Participants that are subject to enhanced surveillance are reported to DTC's management committees and are also regularly reviewed by a cross-functional team comprised of senior management of DTC. More often than not, Participants that are subject to enhanced surveillance are also on the Watch List. The group of Participants that is subject to enhanced surveillance is generally much smaller than the group on the Watch List. The enhanced surveillance list is an internal tool for DTC that triggers increased monitoring of a Participant above the monitoring that occurs when a Participant is on the Watch List.

A Participant could be placed on the Watch List either based on its credit rating of 5, 6 or 7, which can either be generated by the CRRM or from a manual downgrade, or when DTC deems such placement as necessary to protect DTC and its Participants. In contrast, a Participant would be subject to enhanced surveillance only when close monitoring of the Participant is deemed necessary to protect DTC and its Participants.

#### *(ii) Detailed Description of the Proposed Rule Changes*

The 2006 Rule Change, while setting forth the procedures DTC follows with regard to the CRRM and the Watch List, did not incorporate these procedures into the text of the Rules. Pursuant to the proposed rule change, DTC would amend the Rules to incorporate the CRRM with the enhancements proposed above, including (1) the use of both quantitative and qualitative factors in generating credit ratings for CRRM-Rated Participants, (2) the expansion of the scope of CRRM coverage to enable the CRRM to generate credit ratings for Participants that are (a) U.S. banks that file the Consolidated Report of

Condition and Income (“Call Report”), (b) U.S. broker-dealers that file the Financial and Operational Combined Uniform Single Report (“FOCUS Report”) or the equivalent with their regulators, or (c) foreign banks or trust companies that have audited financial data that is publicly available and (3) that the CRRM would use an absolute scoring approach and rank each Participant based on its individual probability of default (rather than the relative scoring approach that is currently in use). Also, the proposed rule change would define the CRRM and the Watch List and add rule text to provide more transparency and clarity regarding DTC’s current ongoing membership monitoring process.

In this regard, the proposed rule change would (i) add proposed definitions for CRRM and Watch List to Rule 1 (Definitions) and (ii) amend Rule 2 (Participants and Pledges) (A) Section 1 to clarify a provision relating to the types of information a Participant must provide to DTC upon DTC’s request for the Participant to demonstrate its satisfactory financial condition and operational capability, including its risk management practices with respect to services of DTC utilized by the Participant for another Person or Persons and (B) to add a new Section 10 to include provisions relating to the monitoring, surveillance and review of Participants, including, but not limited to, the application of the CRRM and proposed enhancements to the CRRM, as further discussed below.

#### A. Proposed Changes to Rule 1 (Definitions)

The proposed rule change would amend Rule 1 to add definitions for the CRRM and the Watch List.

The proposed definition of the CRRM would provide that the term “Credit Risk Rating Matrix” means a matrix of credit ratings of Participants as specified in the proposed new Section 10(a) of Rule 2. As proposed, the definition would state that the CRRM is developed by DTC to evaluate the credit risk such Participants pose to DTC and its Participants and is based on factors determined to be relevant by DTC from time to time, which factors are designed to collectively reflect the financial and operational condition of a Participant. The proposed definition would also state that these factors include (i) quantitative factors, such as capital, assets, earnings and liquidity and (ii) qualitative factors, such as management quality, market position/environment and capital and liquidity risk management.

The proposed definition of the Watch List would provide that the term “Watch List” means, at any time and from time to time, the list of Participants whose credit ratings derived from the CRRM are 5, 6 or 7, as well as Participants that, based on DTC’s consideration of relevant factors, including those that would be set forth in the proposed new Section 10 of Rule 2 (described below), are deemed by DTC to pose a heightened risk to DTC and its Participants.

#### B. Proposed Changes to Section 1 of Rule 2 (Participants and Pledges)

Section 1 of Rule 2 provides, among other things, that upon the request of DTC, a Participant shall furnish to DTC information sufficient to demonstrate its satisfactory financial condition and operational capability. The proposed rule change would, by way of example, clarify that the types of information that DTC may require in this regard include, but are not limited to, such information as DTC may request regarding the businesses and operations of the Participant and its risk management practices with respect to services of DTC utilized by the Participant for another Person.

#### C. Proposed New Section 10 of Rule 2

The proposed rule change would add a new Section 10 of Rule 2 to include provisions relating to the monitoring, surveillance and review of Participants, including, but not limited to, the application of, and the proposed enhancements to, the CRRM. In this regard, the proposed new Section 10 of Rule 2 would provide that:

(1) All Participants would be monitored and reviewed by DTC on an ongoing and periodic basis, which may include monitoring of news and market developments and review of financial reports and other public information.

(2)(i) A Participant that is (A) qualified to be a Participant pursuant to (x) Rule 3, Section 1(d) and files the Call Report (*i.e.*, a U.S. Bank) or (y) Rule 3, Section 1(h)(ii) and files the FOCUS Report or the equivalent with its regulator (*i.e.*, a U.S. broker-dealer) or (B) a foreign bank or trust company qualified to be a Participant pursuant to Section 2 of the Policy Statement on the Admission of Participants and that has audited financial data that is publicly available, would be assigned a credit rating by DTC in accordance with the CRRM. The proposed rule change would also provide that a Participant’s credit rating will be reassessed each time the Participant provides DTC with requested information pursuant to Section 1 of Rule 2, or as may be

otherwise required under the Rules and Procedures<sup>14</sup> (including proposed new Section 10 of Rule 2).

(ii) Because the factors used as part of the CRRM may not identify all risks that a CRRM-Rated Participant may present to DTC, DTC may, in its discretion, override the CRRM-Rated Participant’s credit rating derived from the CRRM to downgrade that Participant. In this regard, the proposed rule change would provide that (A) such a downgrading may result in the Participant being placed on the Watch List, and/or it may subject the Participant to enhanced surveillance based on relevant factors, including those described in paragraph (4) below and (B) DTC may also take such additional actions with regard to the Participant as are permitted by the Rules and Procedures.

(3) Participants other than CRRM-Rated Participants would not be assigned a credit rating by the CRRM but may be placed on the Watch List and/or may be subject to enhanced surveillance based on relevant factors, including those described in paragraph (4) below, as DTC deems necessary to protect it and its Participants.

(4) The factors to be considered by DTC as proposed in paragraphs (2)(ii) and (3) above would include, but would not be not limited to, (i) news reports and/or regulatory observations that raise reasonable concerns relating to the Participant, (ii) reasonable concerns around the Participant’s liquidity arrangements, (iii) material changes to the Participant’s organizational structure, (iv) reasonable concerns of DTC about the Participant’s financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the Participant to demonstrate satisfactory financial condition or operational capability or if DTC has a reasonable concern regarding the Participant’s ability to maintain applicable participation standards and (vi) failure of the Participant to provide information required by DTC to assess risk exposure posed by the Participant’s activity (including information requested by DTC pursuant to Section 1 of Rule 2).

(5) A Participant being subject to enhanced surveillance or being placed on the Watch List would result in more thorough monitoring of the Participant’s financial condition and/or operational capability, which could include, for example, on-site visits or additional due

<sup>14</sup> Pursuant to Section 1 of Rule 1, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. Rules, *supra* note 4.

diligence information requests from DTC. In this regard, the proposed rule change would provide that DTC may require a Participant placed on the Watch List and/or subject to enhanced surveillance to make more frequent financial disclosures, including, without limitation, interim and/or pro forma reports. The proposed rule change would also provide that Participants that are subject to enhanced surveillance would also be reported to DTC's management committees and regularly reviewed by a cross-functional team comprised of senior management of DTC. The proposed rule change would further provide that DTC may also take such additional actions with regard to any Participant (including a Participant placed on the Watch List and/or subject to enhanced surveillance) as are permitted by the Rules and Procedures.

#### Implementation Timeframe

Pending Commission approval, DTC expects to implement this proposal promptly. Participants would be advised of the implementation date of this proposal through issuance of a DTC Important Notice.

#### Expected Effect on Risks to the Clearing Agency, Its Participants and the Market

The proposed rule changes would mitigate Participant credit risk posed to DTC from Participant activity by allowing DTC to more accurately monitor the creditworthiness and risk profile of its Participants. The enhanced CRRM would provide a more robust credit rating methodology by incorporating qualitative factors and adopting an absolute scoring approach. Both of these enhancements would improve DTC's ability to monitor the credit risk of its Participants and are expected to lessen the frequency of manual overrides. The enhanced CRRM would also expand the coverage Participants by providing credit ratings for Participants that are foreign banks or trust companies, which are not covered under the existing CRRM.

By mitigating credit risk to DTC as described above, the enhanced CRRM would also mitigate risk for Participants because lowering the risk profile for DTC would in turn lower the risk exposure that Participants may have with respect to DTC in its role as a securities settlement system.

#### Management of Identified Risks

The proposed rule changes are designed to mitigate credit risk for DTC from Participant activity and to provide greater clarity and transparency to DTC's Participants regarding the risk

management approach used by DTC in this regard.

The enhanced CRRM would improve DTC's ability to monitor the probability of default for Participants that are rated by the CRRM and is expected to lessen the need and the frequency of manual downgrades due to the anticipated improvement in the accuracy of the credit ratings generated by the enhanced CRRM.

DTC employs a risk-based approach to conducting monitoring and review of its Participants by using the CRRM to identify higher risk Participants. Once identified, DTC would place these Participants on the Watch List, which would result in more frequent review by DTC of these Participants than the other Participants. For Participants that are placed on the Watch List, DTC would conduct more thorough monitoring of these Participants' financial condition and/or operational capability, which could include, for example, on-site visits or additional due diligence information requests.

The enhanced CRRM would also expand the coverage of Participants by providing credit ratings for foreign banks and trust companies, which are not currently rated under the existing CRRM. The addition of these entities would allow DTC to employ its risk-based approach to identify those higher risk Participants for additional monitoring with more efficiency (by reducing the need for manual overrides) and effectiveness (by generating a more comprehensive and accurate credit rating after taking into account both quantitative and qualitative factors and adopting the absolute scoring approach).

Thus, the enhanced CRRM would help DTC to identify those Participants that could present credit risk to DTC, which then would allow DTC to better manage the potential risks from these Participants.

#### Consistency With the Clearing Supervision Act

The proposed enhancements to the CRRM as described in detail above would be consistent with Section 805(b) of the Clearing Supervision Act.<sup>15</sup> The objectives and principles of Section 805(b) of the Clearing Supervision Act include, among other things, the promotion of robust risk management.<sup>16</sup>

By enhancing the CRRM to enable it to assign credit ratings to Participants that are foreign banks or trust companies and that have audited financial data that is publicly available, the proposed rule change would expand

the CRRM's applicability to a wider group of Participants, which would improve DTC's membership monitoring process and promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

Similarly, by enhancing the CRRM to enable it to incorporate qualitative factors when assigning a Participant's credit rating, the proposed change would enable DTC to take into account relevant qualitative factors in an automated and more effective manner when monitoring the credit risks presented by the Participants, which would improve DTC's membership monitoring process overall and promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

Likewise, by enhancing the CRRM to shift from a relative scoring approach to an absolute scoring approach when assigning a Participant's credit rating, the proposed rule change would enable DTC to generate credit ratings for Participants that are more reflective of the Participants' default risk, which would improve DTC's membership monitoring process and promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed enhancements to the CRRM are consistent with Rule 17Ad-22(e)(3)(i) under the Act, which was recently adopted by the Commission.<sup>17</sup> Rule 17Ad-22(e)(3)(i) will require DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing risks that arise in or are born by DTC, which includes . . . systems designed to identify, measure, monitor and manage the range of risks that arise in or are borne by DTC.<sup>18</sup> The proposed enhancements to the CRRM have been designed to assist DTC in identifying, measuring, monitoring and managing the credit risks to DTC posed by its Participants. The proposed enhancements to the CRRM accomplish this by (i) expanding the CRRM's

<sup>17</sup> 17 CFR 240.17Ad-22(e)(3)(i). The Commission adopted amendments to Rule 17Ad-22, including the addition of new subsection 17Ad-22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). DTC is a "covered clearing agency" as defined by the new Rule 17Ad-22(a)(5) and must comply with new subsection (e) of Rule 17Ad-22 by April 11, 2017. *Id.*

<sup>18</sup> *Id.*

<sup>15</sup> 12 U.S.C. 5464(b)

<sup>16</sup> *Id.*

applicability to a wider group of Participants to include Participants that are foreign banks or trust companies, (ii) enabling the CRRM to take into account relevant qualitative factors in an automated and more effective manner when monitoring the credit risks presented by Participants and (iii) enabling the CRRM to generate credit ratings for Participants that are more reflective of the Participants' default risk by shifting to an absolute scoring approach, all of which would improve DTC's membership monitoring process overall. Therefore, DTC believes the proposed enhancements to the CRRM would assist DTC in identifying, measuring, monitoring and managing risks that arise in or are born by DTC, consistent with the requirements of Rule 17Ad-22(e)(3)(i).

The proposed rule change to Section 1 of Rule 2 with respect to the scope of information that may be requested by DTC from its Participants has been designed to be consistent with Rule 17Ad-22(e)(19) under the Act, which was recently adopted by the Commission.<sup>19</sup> Rule 17Ad-22(e)(19) will require DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risk to DTC arising from arrangements in which firms that are indirect participants in DTC rely on the services provided by Participants to access DTC's payment, clearing, or settlement facilities.<sup>20</sup> By expressly reflecting in the Rules what is already DTC's current practice associated with its request for information sufficient to demonstrate a Participant's satisfactory financial condition and operational capability to state that such request may include information regarding the businesses and operations of the Participant, as well as its risk management practices with respect to services of DTC utilized by the Participant for another Person, this proposed rule change would help enable DTC to have rule provisions that are reasonably designed to identify, monitor and manage the material risks to DTC arising from tiered participation arrangements consistent with Rule 17Ad-22(e)(19).

### III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date

that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision 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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2017-801 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. All submissions should refer to File Number SR-DTC-2017-801. 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 Advance Notice that

are filed with the Commission, and all written communications relating to the Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 DTC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-DTC-2017-801 and should be submitted on or before April 28, 2017.

By the Commission.

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-07451 Filed 4-12-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80395; File No. SR-FICC-2017-804]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Advance Notice To Enhance the Credit Risk Rating Matrix and Make Other Changes

April 7, 2017.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> notice is hereby given that on March 22, 2017, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the advance notice SR-FICC-2017-804 ("Advance Notice") as described in Items I, II and III below, which Items have been prepared by FICC.<sup>3</sup> The

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> On March 22, 2017, FICC filed this Advance Notice as a proposed rule change (SR-FICC-2017-006) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule

<sup>19</sup> 17 CFR 240.17Ad-22(e)(19). *Id.*

<sup>20</sup> *Id.*

Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of proposed modifications to FICC's Government Securities Division ("GSD") Rulebook ("GSD Rules") and Mortgage-Backed Securities Division ("MBS") Clearing Rules ("MBS Rules," and collectively with the GSD Rules, the "Rules").<sup>4</sup> The proposed rule change would amend the Rules in order to (i) enhance the matrix (hereinafter referred to as the "Credit Risk Rating Matrix" or "CRRM")<sup>5</sup> developed by FICC to evaluate the risks posed by certain GSD Netting Members and MBS Clearing Members (collectively, "CRRM-Rated Members") to FICC and its members from providing services to these CRRM-Rated Members and (ii) make other amendments to the Rules to provide more transparency and clarity regarding FICC's current ongoing membership monitoring process.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

<sup>1</sup> 19b-4, 17 CFR 240.19b-4. A copy of the proposed rule change is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

<sup>4</sup> Capitalized terms not defined herein are defined in the GSD Rules, available at [www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc\\_gov\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf), and the MBS Rules, available at [www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc\\_mbsd\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf).

<sup>5</sup> The proposed rule changes with respect to the enhancement of the CRRM are reflected in the inclusion of (1) qualitative factors and examples thereof in the definition of "Credit Risk Rating Matrix" in GSD Rule 1 and MBS Rule 1 and (2) certain GSD Foreign Netting Members that are banks or trust companies and MBS Bank Clearing Members that are Foreign Persons as CRRM-Rated Members in GSD Rule 3 (Section 12(b)(i)(II)) and MBS Rule 3 (Section 11(b)(i)(II)). The proposed enhancement to CRRM also necessitates a conforming change to the existing Section 12(b) (renumbered to Section 12(c) in this proposed rule filing) of GSD Rule 3 by deleting the reference to Foreign Netting Members and Bank Netting Members participating through their U.S. branches or agencies, as further discussed below.

#### (A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments relating to this proposal have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

#### (B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

##### Nature of the Proposed Change

The proposed rule change would, among other things, enhance the CRRM to enable it to rate FICC members that are foreign banks or trust companies and have audited financial data that is publicly available. It would also enhance the CRRM by allowing it to take into account qualitative factors when generating credit ratings for FICC members. In addition, it would enhance the CRRM by shifting it from a relative scoring approach to an absolute scoring approach.

This rule filing also contains proposed rule changes that are not related to the proposed CRRM enhancements but that provide specificity, clarity and additional transparency to the Rules related to FICC's current ongoing membership monitoring process.

##### (i) Background

FICC occupies an important role in the securities settlement system by interposing itself through each of GSD and MBS as a central counterparty between members that are counterparties to transactions accepted for clearing by FICC, thereby reducing the risk faced by members. FICC uses the CRRM, the Watch List (as defined below) and the enhanced surveillance to manage and monitor default risks of its members on an ongoing basis, as discussed below. The level and frequency of such monitoring for a member is determined by the member's risk of default as assessed by FICC. Members that are deemed by FICC to pose a heightened risk to FICC and its members are subject to closer and more frequent monitoring.

##### Existing Credit Risk Rating Matrix

In 2004, the Commission approved a proposed rule change filed by FICC ("Initial Filing")<sup>6</sup> with respect to GSD and MBS to establish new criteria for

placing certain members of FICC on a list for closer monitoring ("Watch List").

FICC proposed in the Initial Filing that all U.S. broker-dealers and U.S. banks that were GSD Netting Members and/or MBS Clearing Members would be assigned a rating generated by entering financial data of those members into an internally generated credit rating scorecard, *i.e.*, the CRRM.<sup>7</sup> In the Initial Filing, FICC stated that all other types of GSD Netting Members and MBS Clearing Members would be monitored by credit risk staff using financial criteria deemed relevant by FICC but would not be assigned a rating by the CRRM.<sup>8</sup>

Following the approval of the Initial Filing, the Commission approved a subsequent proposed rule change filed by FICC that provided interpretive guidance to the Initial Filing ("Interpretive Guidance Filing").<sup>9</sup> In the Interpretive Guidance Filing, FICC reiterated that U.S. broker-dealers and U.S. banks would be assessed against the CRRM and assigned a credit rating based on quantitative factors. Unfavorably-rated members would be placed on the Watch List. In the Interpretive Guidance Filing, FICC explained that credit risk staff could downgrade a particular member's credit rating based on various qualitative factors. An example of such qualitative factors might be that the member in question received a qualified audit opinion on its annual audit. In the Interpretive Guidance Filing, FICC noted that, in order to protect FICC and its other members, it was important that credit risk staff maintain the discretion to downgrade a member's credit rating on the CRRM and thus subject the member to closer monitoring.

The current CRRM is comprised of two credit rating models—one for the U.S. broker-dealers and one for the U.S. banks—and generates credit ratings for the relevant members based on a 7-point rating system, with "1" being the

<sup>7</sup> Footnote 4 of the Initial Filing explained the new criteria for rating members: "[FICC's] approach to the analysis of members is based on a thorough quantitative analysis. A broker-dealer member's rating on the [CRRM] will be based on factors including size (*i.e.*, total excess net capital), capital, leverage, liquidity, and profitability. Banks will be reviewed based on size, capital, asset quality, earnings, and liquidity." *Id.* These quantitative factors are still being applied today, and FICC currently does not plan to change them.

<sup>8</sup> In the Initial Filing, FICC noted that these members would be monitored by credit risk staff by reviewing similar criteria as those reviewed for members included on the [CRRM] but such review would occur outside of the [CRRM] process. *Id.*

<sup>9</sup> See Securities Exchange Act Release No. 51355 (March 10, 2005), 70 FR 12919 (March 16, 2005) (SR-FICC-2004-08).

<sup>6</sup> See Securities Exchange Act Release No. 49158 (January 30, 2004), 69 FR 5624 (February 5, 2004) (SR-FICC-2003-03).

strongest credit rating and “7” being the weakest credit rating.

Over time, the current CRRM has not kept pace with FICC’s evolving membership base and heightened expectations from regulators and stakeholders for robustness of financial models. Specifically, the current CRRM only generates credit ratings for those GSD Netting Members and MBSB Clearing Members that are U.S. banks or U.S. broker-dealers that file standard reports with their regulators, which currently comprise 77% of GSD Netting Members and 85% of MBSB Clearing Members, respectively; foreign banks and trust companies currently account for 21% of GSD Netting Members and 1% of MBSB Clearing Members.<sup>10</sup> The numbers of GSD and MBSB members that are foreign banks or trust companies increased from 16 and zero in 2012 to 22 and one in 2017, respectively, and are expected to continue to grow over the coming years. Foreign banks and trust companies are typically large global financial institutions that have complex businesses and conduct a high volume of activities. Although foreign banks and trust companies are not currently rated by the CRRM, they are monitored by FICC’s credit risk staff using financial criteria deemed relevant by FICC and can be placed on the Watch List if they experience a financial change that presents risk to FICC. Given the increase in the number of foreign bank or trust company members in FICC in the recent years, there is a need to formalize FICC’s credit risk evaluation process of these members by assigning credit ratings to them in order to better facilitate the comparability of credit risks among members.<sup>11</sup>

In addition, the current CRRM assigns each GSD Netting Member and MBSB Clearing Member that is a U.S. bank or U.S. broker-dealer and that files standard reports with its regulator(s) a credit rating based on inputting certain

<sup>10</sup> As of March 16, 2017, there are 105 GSD Netting Members and 78 MBSB Clearing Members. Of the 105 GSD Netting Members, 13 (or 12%) are U.S. banks, 68 (or 65%) are U.S. broker-dealers and 22 (or 21%) are foreign banks or trust companies. Of the 78 MBSB Clearing Members, 14 (or 18%) are U.S. banks, 52 (or 67%) are U.S. broker-dealers and one (or 1%) is a foreign bank or trust company.

<sup>11</sup> In the Interpretive Guidance Filing, FICC noted that CRRM is applied across FICC and its affiliated clearing agencies, National Securities Clearing Corporation (“NSCC”) and The Depository Trust Company (“DTC”). Specifically, in order to run the CRRM, credit risk staff uses the financial data of the applicable GSD and MBSB members in addition to data of applicable members and participants of NSCC and DTC, respectively. In this way, each applicable GSD and MBSB member is rated against other applicable members and participants of NSCC and DTC, respectively. SR–FICC–2004–08, 70 FR 12919.

quantitative data relative to the applicable member into the CRRM. Accordingly, a member’s credit rating is currently based solely upon quantitative factors. It is only after the CRRM has generated a credit rating with respect to a particular member that such member’s credit rating may be downgraded manually by credit risk staff, after taking into consideration relevant qualitative factors. The inability of the current CRRM to take into account qualitative factors requires frequent and manual overrides by credit risk staff, which may result in inconsistent and/or incomplete credit ratings for members.

Furthermore, the current CRRM uses a relative scoring approach and relies on peer grouping of members to calculate the credit rating of a member. This approach is not ideal because a member’s credit rating can be affected by changes in its peer group even if the member’s financial condition is unchanged.

#### Proposed Credit Risk Rating Matrix Enhancements

To improve the coverage and the effectiveness of the current CRRM, FICC is proposing three enhancements. The first proposed enhancement would expand the scope of CRRM coverage by enabling the CRRM to generate credit ratings for GSD Netting Members and MBSB Clearing Members that are foreign banks or trust companies and that have audited financial data that is publicly available. The second proposed enhancement would incorporate qualitative factors into the CRRM and therefore is expected to reduce the need and the frequency of manual overrides of member credit ratings. The third enhancement would replace the relative scoring approach currently used by CRRM with a statistical approach to estimate the absolute probability of default of each member.

#### A. Enable the CRRM To Generate Credit Ratings for Foreign Bank or Trust Company Members

The current CRRM is comprised of two credit rating models—one for the U.S. broker-dealers and one for the U.S. banks. FICC is proposing to enhance the CRRM by adding an additional credit rating model for the foreign banks and trust companies. The additional model would expand the membership classes to which the CRRM would apply to include foreign banks and trust companies that are GSD Netting Members and/or MBSB Clearing Members and that have audited financial data that is publicly available. The CRRM credit rating of a foreign bank or trust company that is a GSD

Netting Member and/or MBSB Clearing Member would be based on quantitative factors, including size, capital, leverage, liquidity, profitability and growth, and qualitative factors, including market position and sustainability, information reporting and compliance, management quality, capital management and business/product diversity. By enabling the CRRM to generate credit ratings for these GSD Netting Members and MBSB Clearing Members, the enhanced CRRM would provide more comprehensive credit risk coverage of FICC’s membership base.

With the proposed enhancement to the CRRM as described above, applicable foreign bank or trust company GSD Netting Members and MBSB Clearing Members would be included in the CRRM process and be evaluated more effectively and efficiently because financial data with respect to these foreign bank or trust company members could be extracted from data sources in an automated form.<sup>12</sup>

After the proposed enhancement, CRRM would be able to generate credit ratings on an ongoing basis for all GSD Netting Members and MBSB Clearing Members that are U.S. banks, U.S. brokers-dealers and foreign banks and trust companies, which together represent approximately 99% of the GSD Netting Members and 86% of the MBSB Clearing Members, respectively.<sup>13</sup>

#### B. Incorporate Qualitative Factors Into the CRRM

In addition, as proposed, the enhanced CRRM would blend qualitative factors with quantitative factors to produce a credit rating for each applicable member in relation to the member’s credit risk. For U.S. and foreign banks and trust companies, the enhanced CRRM would use a 70/30 weighted split between quantitative and qualitative factors to generate credit ratings. For U.S. broker-dealers, the weight split between quantitative and qualitative factors would be 60/40.

<sup>12</sup> In the Initial Filing, FICC noted that these members would be monitored by credit risk staff by reviewing similar criteria as those reviewed for members included on the CRRM, but such review would occur outside of the CRRM process. SR–FICC–2003–03, 69 FR 5624.

<sup>13</sup> As of March 16, 2017, there are two GSD Netting Members that are government sponsored entities and therefore would not be rated by the enhanced CRRM, as proposed; there are also 11 MBSB Clearing Members that would not be rated by the enhanced CRRM, as proposed, because they are government sponsored entities, registered investment companies, unregistered investment pools (“UIPs”) or other entities that are eligible for MBSB Clearing Membership pursuant to Section 1(i) of MBSB Rule 2A. MBSB Rules, *supra* note 4.

These weight splits are chosen by FICC based on the industry best practice as well as research and sensitivity analysis conducted by FICC. FICC would review and adjust the weight splits as well as the quantitative and qualitative factors, as needed, based on recalibration of the CRRM to be conducted by FICC approximately every three to five years.

Although there are advantages to measuring credit risk quantitatively, quantitative evaluation models alone are incapable of fully capturing all credit risks. Certain qualitative factors may indicate that a member is or will soon be undergoing financial distress, which may in turn signal a higher default exposure to FICC and its other members. As such, a key enhancement being proposed to the CRRM is the incorporation of relevant qualitative factors into each of the three credit rating models mentioned above. By including qualitative factors in the three credit rating models, the enhanced CRRM would capture risks that would otherwise not be accounted for with quantitative factors alone.<sup>14</sup> Adding qualitative factors to the CRRM would not only enable it to generate more consistent and comprehensive credit ratings for applicable members, but it would also help reduce the need and frequency of manual credit rating overrides by the credit risk staff because overrides would likely only be required under more limited circumstances.<sup>15</sup>

### C. Shifting From Relative Scoring to Absolute Scoring

As proposed, the enhanced CRRM would use an absolute scoring approach and rank each member based on its individual probability of default rather than the relative scoring approach that is currently in use. This proposed change is designed to have a member's CRRM-generated credit rating reflect an absolute measure of the member's default risk and eliminate any potential distortion of a member's credit rating from the member's peer group that may

<sup>14</sup> The initial set of qualitative factors that would be incorporated into the CRRM includes (a) for U.S. broker dealers, market position and sustainability, management quality, capital management, liquidity management, geographic diversification, business/product diversity and access to funding, (b) for U.S. banks, environment, compliance/litigation, management quality, liquidity management and parental demands and (c) for foreign banks and trust companies, market position and sustainability, information reporting and compliance, management quality, capital management and business/product diversity.

<sup>15</sup> Once a member is assigned a credit rating, if circumstances warrant, credit risk staff would still have the ability to override the CRRM-issued credit rating by manually downgrading such rating as they do today. To ensure a conservative approach, the CRRM-issued credit ratings cannot be manually upgraded.

occur under the relative scoring approach used in the existing CRRM.

### D. Watch List and Enhanced Surveillance

In addition to the Watch List, FICC also maintains an enhanced surveillance list (referenced herein and in the proposed rule text as "enhanced surveillance") for membership monitoring. The enhanced surveillance list is generally used when members are undergoing drastic and unexpected changes in their financial conditions or operation capabilities and thus are deemed by FICC to be of the highest risk level and/or warrant additional scrutiny due to FICC's ongoing concerns about these members. Accordingly, members that are subject to enhanced surveillance are reported to FICC's management committees and are also regularly reviewed by a cross-functional team comprised of senior management of FICC. More often than not, members that are subject to enhanced surveillance are also on the Watch List. The group of members that is subject to enhanced surveillance is generally much smaller than the group on the Watch List. The enhanced surveillance list is an internal tool for FICC that triggers increased monitoring of a member above the monitoring that occurs when a member is on the Watch List.

A member could be placed on the Watch List either based on its credit rating of 5, 6 or 7, which can either be generated by the CRRM or from a manual downgrade, or when FICC deems such placement as necessary to protect FICC and its members. In contrast, a member would be subject to enhanced surveillance only when close monitoring of the member is deemed necessary to protect FICC and its members.

The Watch List and enhanced surveillance tools are not mutually exclusive; they may complement each other under certain circumstances. A key distinction between the Watch List and enhanced surveillance is that being placed on the Watch List may result in Clearing Fund related consequences under the Rules, whereas enhanced surveillance does not.<sup>16</sup> For example, a member that is in a precarious situation could be placed on the Watch List and be subject to enhanced surveillance; however, because the Watch List status could require additional Clearing Fund deposits, when FICC has preliminary

<sup>16</sup> FICC expects to provide additional clarity to members regarding the Watch List and its impact on Clearing Fund deposits in a subsequent proposed rule change to be filed with the Commission in 2017.

concerns about a member, to avoid potential increase to a member's Clearing Fund deposit, FICC may opt not to place the member on the Watch List until it is certain that such concerns would not be alleviated in the short-term. Instead, in such a situation, FICC might first subject the member to enhanced surveillance in order to closely monitor the member's situation without affecting the member's Clearing Fund deposits. If the member's situation improves, then it will no longer be subject to enhanced surveillance. If the situation of the member worsens, the member may then be placed on the Watch List as deemed necessary by FICC.

### (ii) Detailed Description of the Proposed Rule Changes Related to the Proposed CRRM Enhancements

In connection with the proposed enhancements to the CRRM, FICC proposes to amend the GSD Rules and the MBSD Rules to (1) incorporate qualitative factors into CRRM and (2) add foreign banks and trust companies that are GSD Netting Members and MBSD Clearing Members to the categories of members that would be assigned credit ratings by FICC using the CRRM.

#### A. Proposed Changes to GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions)

FICC is proposing to amend the "Credit Risk Rating Matrix" definition in GSD Rule 1 and MBSD Rule 1 to include qualitative factors, such as management quality, market position/environment and capital and liquidity risk management, because, as proposed, the enhanced CRRM would blend both qualitative factors and quantitative factors to produce a credit rating for each applicable FICC member.

#### B. Proposed Changes to Section 12(b)(i)(II) of GSD Rule 3 (Ongoing Membership Requirements) and Section 11(b)(i)(II) of MBSD Rule 3 (Ongoing Membership Requirements)

FICC is proposing to amend Section 12(b)(i)(III) of GSD Rule 3 and Section 11(b)(i)(III) of MBSD Rule 3 to expand the membership types to which the CRRM would apply to include GSD Netting Members and MBSD Clearing Members, as applicable, that are foreign banks or trust companies and that have audited financial data that are publicly available.

The enhanced CRRM would assign credit ratings for each GSD Netting Member and/or MBSD Clearing Member that is a foreign bank or trust company based on its publicly available audited

financial data. The credit rating would be based on an 18-point scale, which is then mapped to the 7-point rating system currently in use today, with “1” being the strongest credit rating and “7” being the weakest credit rating.

(iii) Other Proposed Rule Changes

This rule filing also contains proposed rule changes that are unrelated to the proposed enhancement of the CRRM. These proposed rule changes would provide specificity, clarity and additional transparency to the Rules with respect to FICC’s current ongoing membership monitoring process, as described below.

A. Proposed Changes to the Definitions of “Credit Risk Rating Matrix” and “Watch List” in GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions)

FICC is proposing to amend the definition of “Credit Risk Rating Matrix” in GSD Rule 1 and MBSD Rule 1 to state that, in addition to the proposed qualitative factors described above, the CRRM is also based on quantitative factors, such as capital, assets, earnings and liquidity.

FICC is also proposing to amend the definition of “Watch List” in GSD Rule 1 and MBSD Rule 1 to state that the Watch List is comprised of members whose credit ratings derived from the CRRM are 5, 6 or 7 as well as members that are deemed by FICC to pose a heightened risk to FICC and its members based on FICC’s consideration of relevant factors, including those set forth in Section 12(d) of GSD Rule 3 and Section 11(d) of MBSD Rule 3, as applicable.

B. Proposed Changes to GSD Rule 3 and MBSD Rule 3

Section 7 of GSD Rule 3 and Section 6 of MBSD Rule 3

FICC is proposing to amend Section 7 of GSD Rule 3 and Section 6 of MBSD Rule 3 to state that review of a GSD Member’s or MBSD Member’s financial or operational conditions may (1) include FICC requesting information regarding the businesses and operations of the member and its risk management practices with respect to FICC’s services utilized by the member for another Person and (2) result in the member being placed on the Watch List and/or being subject to enhanced surveillance as determined by FICC.

FICC members are direct participants of GSD and/or MBSD, as applicable. However, there are firms that rely on the services provided by GSD Members or MBSD Members in order to have their activity cleared and settled through

FICC’s facilities (the “indirect participants”). These indirect participants pose certain risks to FICC that need to be identified and monitored as part of FICC’s ongoing member due diligence process. In order for FICC to understand (1) the material dependencies between FICC members and the indirect participants that rely on the FICC members for the clearance and settlement of the indirect participants’ transactions, (2) significant FICC member-indirect participant relationships and (3) the various risk controls and mitigants that these FICC members employ to manage their risks with respect to such relationships, FICC may request information from GSD Members or MBSD Members regarding the members’ businesses and operations as well as their risk management practices with respect to services of FICC utilized by the FICC members for indirect participants. The information provided by FICC members would then be taken into consideration by FICC when determining whether a GSD Member or an MBSD Member, as applicable, may need to be placed on the Watch List, be subject to enhanced surveillance or both.

Section 12(a) of GSD Rule 3 and Section 11(a) of MBSD Rule 3

FICC is proposing to amend Section 12(a) of GSD Rule 3 and Section 11(a) of MBSD Rule 3 in order to specify the membership types that are currently subject to FICC’s ongoing monitoring and review. FICC currently monitors and reviews all (a) GSD Netting Members, Sponsoring Members and Funds-Only Settling Bank Members and (b) MBSD Members on an ongoing and periodic basis, which may include monitoring news and market developments relating to these members and conducting reviews of financial reports and other public information of these members.

Section 12(b)(i) of GSD Rule 3 and Section 11(b)(i) of MBSD Rule 3

FICC is proposing to add Section 12(b)(i) of GSD Rule 3 and Section 11(b)(i) of MBSD Rule 3 to (1) clarify that FICC is currently using the CRRM to generate credit ratings for (A) GSD Members that are Bank Netting Members and MBSD Members that are Bank Clearing Members; provided that each such member files the Consolidated Report of Condition and Income (“Call Report”) and (B) GSD Members that are Dealer Netting Members and Inter-Dealer Broker Netting Members and MBSD Members that are Dealer Clearing Members or Inter-Dealer Broker Clearing Members; provided that

each such member files the Financial and Operational Combined Uniform Single Report (“FOCUS Report”) or the equivalent with its regulator, (2) clarify that each CRRM-Rated Member’s credit rating would be reassessed upon receipt of additional information from the member and (3) delete language that states members may be placed on the Watch List based on their ratings as determined by CRRM or based on their failure to comply with operational standards and requirements.

Currently, Section 11(a) of MBSD Rule 3 states that UIPs are rated by the CRRM. FICC proposes to delete this statement and amend it to state that FICC reviews and monitors UIPs (as with all MBSD Members).<sup>17</sup> This proposed change corrects an error in the MBSD Rules and does not affect any rights or obligations of the MBSD Members because UIPs are still reviewed by FICC through proposed Section 11(a) of MBSD Rule 3.

Section 12(b)(ii) of GSD Rule 3 and Section 11(b)(ii) of MBSD Rule 3

FICC is proposing to add Section 12(b)(ii) of GSD Rule 3 and Section 11(b)(ii) of MBSD Rule 3 to provide that, because the factors used as part of the CRRM may not identify all risks that a member may pose to FICC, FICC may, in addition to other actions permitted by the Rules, downgrade the member’s credit rating derived from the CRRM if FICC believes the CRRM-generated rating is insufficiently conservative or if it deems such downgrade as necessary to protect FICC and its members. Depending on the credit rating of the member, a downgrade may result in the member being placed on the Watch List and/or being subject to enhanced surveillance based on relevant factors.

Section 12(c) of GSD Rule 3 and Section 11(c) of MBSD Rule 3

FICC is proposing to re-number the existing Section 12(b) of GSD Rule 3 and Section 11(b) of MBSD Rule 3 to Section 12(c) and Section 11(c) of the respective Rules as well as to amend these sections to state that, other than those members specified in Section 12(b)(i) of GSD Rule 3 and Section 11(b)(i) of MBSD Rule 3, FICC may place (1) GSD Sponsoring Members, Funds-Only Settling Bank Members and Netting Members and (2) MBSD Members, on the Watch List and/

<sup>17</sup> Amendment No. 1 to SR-FICC-2008-01, approved by the Commission in 2012, eliminated any reference to the CRRM with regards to UIPs; however, due to a clerical error, this change was not included in the Exhibit 5 thereto and therefore not reflected in the current MBSD Rules. See Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (SR-FICC-2008-01). FICC is proposing to correct this error.

or subject them to enhanced surveillance even though they are not being assigned credit ratings by FICC in accordance with the CRRM.

Section 12(d) of GSD Rule 3 and Section 11(d) of MBS Rule 3

FICC is proposing to add Section 12(d) to GSD Rule 3 and Section 11(d) to MBS Rule 3 to describe some of the factors that could be taken into consideration by FICC when downgrading a member's credit rating, placing a member on the Watch List and/or subjecting a member to enhanced surveillance. These factors include but are not limited to (i) news reports and/or regulatory observations that raise reasonable concerns relating to the member, (ii) reasonable concerns around the member's liquidity arrangements, (iii) material changes to the member's organizational structure, (iv) reasonable concerns of FICC about the member's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the member to demonstrate satisfactory financial condition or operational capability or if FICC has a reasonable concern regarding the member's ability to maintain applicable membership standards and (vi) failure of the member to provide information required by FICC to assess risk exposures posed by the member's activity.

Section 12(e) of GSD Rule 3 and Section 11(e) of MBS Rule 3

FICC is proposing to re-number the existing Section 12(c) of GSD Rule 3 and Section 11(c) of MBS Rule 3 to Section 12(e) and Section 11(e) of the respective Rules and refer to FICC's ability to retain any Excess Clearing Fund Deposits of a GSD Netting Member or an MBS Clearing Member, as applicable, that has been placed on the Watch List pursuant to Section 9 of GSD Rule 4 or Section 9 of MBS Rule 4, as applicable. In addition, FICC is proposing technical modifications in these sections to correct grammatical errors and add a section reference.

Section 12(f) of GSD Rule 3 and Section 11(f) of MBS Rule 3

FICC is proposing to re-number the existing Section 12(d) of GSD Rule 3 and Section 11(d) of MBS Rule 3 to Section 12(f) and Section 11(f) of the respective Rules and provide that FICC would, in addition to other actions permitted by the Rules, conduct a more thorough monitoring of the financial condition and/or operational capability of, and require more frequent financial disclosures from, not only those

members that are placed on the Watch List but also members subject to enhanced surveillance, including examples of how the monitoring could be conducted and the types of disclosures that may be required. In addition, members that are subject to enhanced surveillance would be reported to FICC's management committees and regularly reviewed by a cross-functional team comprised of senior management of FICC.

Other Proposed Changes to GSD Rule 3 and MBS Rule 3

In addition to the proposed changes described above, FICC is proposing to delete the existing Section 12(e) of GSD Rule 3 and Section 11(e) of MBS Rule 3 to eliminate FICC's right to place a member with an Excess Capital Ratio of 0.5 or greater on the Watch List because FICC has not used, nor does it plan to use, this threshold.

In addition, FICC is proposing to delete the existing Section 12(f) of GSD Rule 3 and Section 11(f) of MBS Rule 3 to eliminate language that requires FICC to place a GSD Netting Member or an MBS Clearing Member, as applicable, on the Watch List if FICC takes any action against the GSD Netting Member or the MBS Clearing Member under GSD Rule 3, Section 7 (General Continuance Standards) and MBS Rule 3, Section 6 (General Continuance Standards), respectively. FICC is proposing these deletions because placement of a member on the Watch List would be covered by the proposed changes to Sections 12(b), (c) and (d) of GSD Rule 3 and Sections 11(b), (c) and (d) of MBS Rule 3. As such, the language being deleted by this proposed change would no longer be needed.

Similarly, FICC is proposing to delete language that requires a GSD Netting Member or an MBS Clearing Member, as applicable, to remain on the Watch List until the condition(s) that resulted in its placement on the Watch List are no longer present or if close monitoring by FICC is no longer warranted. FICC is proposing this deletion because whether a member remains on the Watch List would be covered by the proposed changes to Sections 12(b), (c) and (d) of GSD Rule 3 and Sections 11(b), (c) and (d) of MBS Rule 3. As such, the language being deleted by this proposed change would no longer be needed.

C. Proposed Changes to GSD Rules 5, 11 and 18

FICC is also proposing to amend GSD Rules 5 (Comparison System), 11 (Netting System) and 18 (Special Provisions for Repo Transactions) to clarify that FICC may subject (1) a

Comparison-Only Member to enhanced surveillance if FICC has determined that the Comparison-Only Member has violated its obligations under Section 1 of GSD Rule 5 and (2) a Netting Member to enhanced surveillance if FICC has determined that the Netting Member has violated its obligations under Section 3 of GSD Rule 11 or Section 2 of GSD Rule 18. In addition, FICC is proposing to amend GSD Rule 11 to correct a typographical error.

Implementation Timeframe

Pending Commission approval, FICC expects to implement this proposal promptly. Members would be advised of the implementation date of this proposal through issuance of a FICC Important Notice.

Expected Effect on Risks to the Clearing Agency, Its Participants and the Market

The proposed rule changes would mitigate counterparty credit risk for FICC by allowing FICC to more accurately monitor the creditworthiness and risk profile of its members. The enhanced CRRM would provide a more robust credit rating methodology by incorporating qualitative factors and adopting an absolute scoring approach. Both of these enhancements would improve FICC's ability to monitor the credit risk of its members and are expected to lessen the frequency of manual overrides. The enhanced CRRM would also expand the coverage of FICC's membership by providing credit ratings for members that are foreign banks or trust companies, which are not covered under the existing CRRM.

By mitigating counterparty credit risk for FICC as described above, the enhanced CRRM would also mitigate risk for FICC members because lowering the risk profile for FICC would in turn lower the risk exposure that FICC members may have with respect to FICC in its role as a central counterparty.

Management of Identified Risks

The proposed rule changes are designed to mitigate counterparty credit risk for FICC and to provide greater clarity and transparency to FICC's members regarding the counterparty credit risk management approach used by FICC.

The enhanced CRRM would improve FICC's ability to monitor the probability of default for members that are rated by the CRRM and is expected to lessen the need and the frequency of manual downgrades due to the anticipated improvement in the accuracy of the credit ratings generated by the enhanced CRRM.

FICC employs a risk-based approach to conducting monitoring and review of its members by using the CRRM to identify higher risk members. Once identified, FICC would place these members on the Watch List, which would result in more frequent review by FICC of these members than the other members. For members that are placed on the Watch List, FICC would conduct more thorough monitoring of these members' financial condition and/or operational capability, which could include, for example, on-site visits or additional due diligence information requests.

FICC members that have been placed on the Watch List may also be required to maintain a higher deposit to the GSD Clearing Fund or MBSD Clearing Fund, as applicable, which would help offset potential risks to FICC and its members arising from activity submitted by these members.

The enhanced CRRM would also expand the coverage of FICC's membership by providing credit ratings for foreign banks and trust companies, which are not currently rated under the existing CRRM. The addition of these entities would allow FICC to employ its risk-based approach to identify those higher risk members for additional monitoring with more efficiency (by reducing the need for manual overrides) and effectiveness (by generating a more comprehensive and accurate credit rating after taking into account both quantitative and qualitative factors and adopting the absolute scoring approach).

Thus, the enhanced CRRM would help FICC to identify those members that could present credit risk to FICC, which then would allow FICC to better manage the potential risks from these members.

#### Consistency With the Clearing Supervision Act

The proposed enhancements to the CRRM as described in detail above would be consistent with Section 805(b) of the Clearing Supervision Act.<sup>18</sup> The objectives and principles of Section 805(b) of the Clearing Supervision Act include, among other things, the promotion of robust risk management.<sup>19</sup>

By enhancing the CRRM to enable it to assign credit ratings to members that are foreign banks or trust companies and that have audited financial data that is publicly available, the proposed rule change would expand the CRRM's applicability to a wider group of members, which would improve FICC's membership monitoring process and

promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

Similarly, by enhancing the CRRM to enable it to incorporate qualitative factors when assigning a member's credit rating, the proposed change would enable FICC to take into account relevant qualitative factors in an automated and more effective manner when monitoring the credit risks presented by the GSD Netting Members and MBSD Clearing Members, which would improve FICC's membership monitoring process overall and promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

Likewise, by enhancing the CRRM to shift from a relative scoring approach to an absolute scoring approach when assigning a member's credit rating, the proposed rule change would enable FICC to generate credit ratings for members that are more reflective of the members' default risk, which would improve FICC's membership monitoring process and promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed enhancements to the CRRM are consistent with Rule 17Ad-22(e)(3)(i) under the Act, which was recently adopted by the Commission.<sup>20</sup> Rule 17Ad-22(e)(3)(i) will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing risks that arise in or are born by FICC, which includes . . . systems designed to identify, measure, monitor and manage the range of risks that arise in or are borne by FICC.<sup>21</sup> The proposed enhancements to the CRRM have been designed to assist FICC in identifying, measuring, monitoring and managing the credit risks to FICC posed by its members. The proposed enhancements to the CRRM accomplish this by (i) expanding the CRRM's applicability to a wider group of members to include members that are foreign banks or trust companies, (ii) enabling the CRRM to

take into account relevant qualitative factors in an automated and more effective manner when monitoring the credit risks presented by FICC's members and (iii) enabling the CRRM to generate credit ratings for members that are more reflective of the members' default risk by shifting to an absolute scoring approach, all of which would improve FICC's membership monitoring process overall. Therefore, FICC believes the proposed enhancements to the CRRM would assist FICC in identifying, measuring, monitoring and managing risks that arise in or are born by FICC, consistent with the requirements of Rule 17Ad-22(e)(3)(i).

The proposed rule change to Section 7 of GSD Rule 3 and Section 6 of MBSD Rule 3 with respect to the scope of information that may be requested by FICC from its members has been designed to be consistent with Rule 17Ad-22(e)(19) under the Act, which was recently adopted by the Commission.<sup>22</sup> Rule 17Ad-22(e)(19) will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risk to FICC arising from arrangements in which firms that are indirect participants in FICC rely on the services provided by GSD Members and MBSD Members to access FICC's payment, clearing, or settlement facilities.<sup>23</sup> By expressly reflecting in the Rules what is already FICC's current practice associated with its request for additional reporting of a GSD Member's or MBSD Member's financial or operational conditions to state that such request may include information regarding the businesses and operations of the member, as well as its risk management practices with respect to services of FICC utilized by the member for another Person, this proposed rule change would help enable FICC to have rule provisions that are reasonably designed to identify, monitor and manage the material risks to FICC arising from tiered participation arrangements consistent with Rule 17Ad-22(e)(19).

#### III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the

<sup>20</sup> 17 CFR 240.17Ad-22(e)(3)(i). The Commission adopted amendments to Rule 17Ad-22, including the addition of new subsection 17Ad-22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). FICC is a "covered clearing agency" as defined by the new Rule 17Ad-22(a)(5) and must comply with new subsection (e) of Rule 17Ad-22 by April 11, 2017. *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 17 CFR 240.17Ad-22(e)(19). *Id.*

<sup>23</sup> *Id.*

<sup>18</sup> 12 U.S.C. 5464(b)

<sup>19</sup> *Id.*

Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision 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](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2017-804 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.
- All submissions should refer to File Number SR-FICC-2017-804. 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 Advance Notice that are filed with the Commission, and all written communications relating to the

Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 FICC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-FICC-2017-804 and should be submitted on or before April 28, 2017.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-07452 Filed 4-12-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80399; File No. SR-BatsBZX-2017-10]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade Shares of the iShares iBonds Dec 2024 AMT-Free Muni Bond ETF, iShares iBonds Dec 2025 AMT-Free Muni Bond ETF, and iShares iBonds Dec 2026 AMT-Free Muni Bond ETF of the iShares U.S. ETF Trust Under Exchange Rule 14.11(i)

April 7, 2017.

#### I. Introduction

On January 31, 2017, Bats BZX Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to list and trade shares of the iShares iBonds Dec 2024 AMT-Free Muni Bond ETF, iShares iBonds Dec 2025 AMT-Free Muni Bond ETF, and iShares iBonds Dec 2026 AMT-Free Muni Bond ETF (each a "Fund" or,

collectively, the "Funds") of the iShares U.S. ETF Trust ("Trust") under Exchange Rule 14.11(i).<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on February 21, 2017.<sup>5</sup> On March 28, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced the original proposal in its entirety, and on March 29, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>6</sup> The Commission has received no comment letters on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendments No. 1 and No. 2.

#### II. The Exchange's Description of the Proposed Rule Change<sup>7</sup>

The Exchange proposes to list and trade the Shares under Exchange Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. 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.<sup>8</sup>

The Shares will be offered by the Trust,<sup>9</sup> which is established as a

<sup>4</sup> The shares of the Funds are referred to herein as the "Shares."

<sup>5</sup> See Securities Exchange Act Release No. 80036 (February 14, 2017), 82 FR 11278.

<sup>6</sup> The amendments to the proposed rule change are available at: <https://www.sec.gov/comments/sr-batsbzx-2017-10/batsbzx201710.htm>. In Amendment No. 1, the Exchange clarified the operation of the portfolio diversification requirements and its description of how the Funds' net asset values will be calculated. In Amendment No. 2, the Exchange affirmed that: (1) All statements and representations made in the proposed rule change regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange; (2) 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; (3) the Exchange will surveil for compliance with the continued listing requirements; and (4) if a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. Each of the amendments is a technical amendment, and none of them is subject to notice and comment.

<sup>7</sup> The Commission notes that additional information regarding the Trust, the Funds, their investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in Amendment No. 1 and the Registration Statement, as applicable. See Amendment No. 1, *supra* note 6, and Registration Statement, *infra* note 9.

<sup>8</sup> See Amendment No. 1, *supra* note 6, at 39.

<sup>9</sup> The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Delaware statutory trust. BlackRock Fund Advisors is the investment adviser (“BFA” or “Adviser”) to the Funds.<sup>10</sup> State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. BlackRock Investments, LLC serves as the distributor for the Trust.

According to the Exchange, the investment objective of each Fund will be to maximize tax-free current income and terminate on or around December 2024, December 2025 or December 2026, as applicable.

#### A. The Funds’ Principal Investments

Under normal circumstances,<sup>11</sup> each Fund will invest at least 80% of its net assets in U.S.-dollar denominated investment-grade fixed-rate Municipal Securities,<sup>12</sup> as defined below, such that the interest on each security is exempt from U.S. federal income taxes and the

Form N-1A (“Registration Statement”) with the Commission. See Registration Statement on Form N-1A for the Trust, dated November 2, 2015 (File Nos. 333-179904 and 811-22649). See also Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601).

<sup>10</sup> The Exchange represents that the Adviser is not registered as a broker-dealer. The Adviser is affiliated with multiple broker-dealers and has implemented fire walls with respect to such respective broker-dealer affiliate(s) regarding access to information concerning the composition of and/or changes to the portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of, or changes to, the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. See Amendment No. 1, *supra* note 6, at 6; see also Exchange Rule 14.11(i)(7).

<sup>11</sup> The term “under normal circumstances” includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the financial markets; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot, or labor disruption, or any similar intervening circumstance.

<sup>12</sup> Investment-grade securities are rated a minimum of BBB- or higher by Standard & Poor’s Ratings Services and/or Fitch, or Baa3 or higher by Moody’s, or if unrated, determined by the Adviser to be of equivalent quality. According to the Adviser, BFA may determine that unrated securities are of “equivalent quality” based on such credit quality factors that it deems appropriate, which may include among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical ratings organization when rating similar securities and issuers. In making such a determination, BFA may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Adviser. See Amendment No. 1, *supra* note 6, at 8, n.9.

federal alternative minimum tax (“AMT”). The Municipal Securities in which the Funds will invest are fixed and variable rate securities issued in the United States by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will consist of only the following instruments: general obligation bonds, limited obligation bonds (or revenue bonds), municipal notes, municipal commercial paper, tender option bonds, variable rate demand obligations (“VRDOs”), municipal lease obligations, stripped securities, structured securities,<sup>13</sup> when issued securities, zero coupon securities, and exchange-traded and non-exchange-traded investment companies that invest in such Municipal Securities.

In each Fund’s last year of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including, without limitation, shares of affiliated money market funds, AMT-free tax-exempt municipal notes, VRDOs, tender option bonds and municipal commercial paper. In or around December 2024, December 2025, or December 2026, as applicable, the Fund will wind up and terminate, and its net assets will be distributed to then current shareholders.

#### B. Other Portfolio Holdings of the Funds

Under normal circumstances each Fund may also hold, to a limited extent (less than 20% of the Fund’s net assets), interest rate futures, interest rate options, interest rate swaps, and swaps on Municipal Securities indexes.<sup>14</sup>

A Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities. A Fund may also invest in short-term instruments, which includes exchange-traded and non-exchange-traded investment companies that invest in money market instruments.

#### C. The Funds’ Investment Restrictions

Each Fund will hold a minimum of 40 different Municipal Securities diversified among issuers in at least 8 different states with no more than 30% of the Fund’s assets comprised of Municipal Bonds that provide exposure

to any single state (collectively, “Minimum Requirement 1”). Each Fund will hold a minimum of 75 different Municipal Securities when at least four creation units are outstanding (“Trigger Number 1A”). Each Fund will hold a minimum of 100 different Municipal Securities diversified among issuers in at least 20 different states when at least eight creation units are outstanding (“Trigger Number 1B”). No single Municipal Security held by any Fund will exceed 4% of the weight of the Fund’s portfolio and no single issuer of Municipal Securities will account for more than 10% of the weight of any Fund’s portfolio (collectively, “Minimum Requirement 2”). Each Fund will hold Municipal Securities of at least 20 non-affiliated issuers (“Minimum Requirement 3”). Each Fund will hold Municipal Securities of at least 30 non-affiliated issuers when at least four creation units are outstanding (“Trigger Number 2”).<sup>15</sup> To the extent that a Fund at one point has sufficient creation units outstanding necessary to trigger a diversity requirement laid out above (each of Trigger Numbers 1A, 1B and 2, a “Trigger Number”), but subsequently has fewer creation units outstanding than the applicable Trigger Number, the Fund may no longer comply with the applicable diversity requirement. However, while a Fund may no longer comply with the diversity requirements applicable to the previously applicable Trigger Number, the Fund will continue to comply with any diversity requirement for which the number of creation units outstanding continues to exceed the Trigger Number (*i.e.*, Trigger Number 1A), as well as each of Minimum Requirements 1, 2 and 3.<sup>16</sup>

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the

<sup>13</sup> Structured securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund’s net assets. See *id.* at 9, n.19.

<sup>14</sup> The derivatives will be centrally cleared and they will be collateralized. See Amendment No. 1, *supra* note 6, at 12, n.26.

<sup>15</sup> The Exchange clarifies that 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 Securities. See Amendment No. 1, *supra* note 6, at 11, n.23; at 18, n.47; and at 26, n.71.

<sup>16</sup> *Id.* at 11, n.24; at 18, n.48; and at 26, n.72.

Fund's net assets are held in illiquid assets.<sup>17</sup>

Each Fund may also invest up to 20% of its net assets in Municipal Securities that pay interest that is subject to the AMT.<sup>18</sup>

### III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>22</sup> which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. The Exchange provides that quotation and last-sale information for the Shares will be available on the facilities of the Consolidated Tape Association ("CTA"). In addition, for each Fund, an Intraday Indicative Value will be calculated and disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.<sup>23</sup>

According to the Exchange, each Fund's NAV will be determined as of the close of regular trading on the New York Stock Exchange ("NYSE")

(generally 4:00 p.m., E.T.) on each day the NYSE is open for trading. Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Exchange represents that intraday, executable price quotations on assets held by each Fund are available from major broker-dealer firms, and for exchange-traded assets such intraday information is available directly from the applicable listing exchange. All such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors. Pricing information for repurchase agreements and securities not listed on an exchange or national securities market will be available from major broker-dealer firms and/or subscription services, such as Bloomberg, Thomson Reuters, and International Data Corporation. Price information relating to all other securities held by the Funds will be available from major market data vendors. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Web site will also include additional quantitative information, updated on a daily basis, for each Fund.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes 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 identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day, will be made available to all market participants at the same time. Trading in Shares of a Fund will be halted under the conditions specified in Exchange Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the

Shares will be subject to Exchange Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which trading in the Shares may be halted.

The Exchange states that it prohibits the distribution of material, non-public information by its employees. In addition, the Exchange represents that the Adviser is not registered as a broker-dealer; however, the Adviser is affiliated with multiple broker-dealers, and has implemented a fire wall with respect to its respective broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio.<sup>24</sup>

The Exchange represents that trading in the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the Intermarket Surveillance Group ("ISG"), from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>25</sup> In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to the Financial Industry Regulatory Authority's Trade Reporting and Compliance Engine ("TRACE").

The Exchange represents that all statements and representations made in the proposed rule change regarding (a) the description of the portfolio, (b)

<sup>24</sup> See Amendment No. 1, *supra* note 6, at 6. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>25</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>17</sup> *Id.* at 13-14.

<sup>18</sup> *Id.* at 14.

<sup>19</sup> 15 U.S.C. 78f.

<sup>20</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>23</sup> See Exchange Rule 14.11(i)(4)(B)(i). "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See Exchange Rule 1.5(w). The Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio. See Exchange Rule 14.11(i)(3)(C).

limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, 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 the Exchange Rule 14.12.<sup>26</sup>

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. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to Exchange Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.<sup>27</sup>

(2) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.<sup>28</sup>

(3) The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE.<sup>29</sup>

(4) Structured securities, when combined with instruments held as part of the other portfolio holdings as described above, will not exceed 20% of each Fund's net assets.<sup>30</sup>

(5) Each Fund will comply with Minimum Requirements 1, 2, and 3. If a Fund at any point has sufficient creation units outstanding necessary to trigger a diversity requirement and subsequently has fewer creation units outstanding than those applicable to the Trigger Number, the Fund will continue

to comply with any diversity requirement for which the number of creation units outstanding continues to exceed the Trigger Number, as well as each of Minimum Requirements 1, 2 and 3.

(6) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), as deemed illiquid by the Adviser.<sup>31</sup>

(7) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Exchange Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening<sup>32</sup> and After Hours Trading Sessions<sup>33</sup> when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members 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 Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.<sup>34</sup>

(8) For initial and/or continued listing, each Fund must be in compliance with Rule 10A-3 under the Act.<sup>35</sup>

(9) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.<sup>36</sup>

(10) 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.<sup>37</sup>

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendments No. 1 and No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act<sup>38</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> that the proposed rule change (SR-BatsBZX-2017-10), as modified by Amendments No. 1 and No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-07456 Filed 4-12-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80404; File No. SR-NSCC-2017-003]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide for a New Data Repository Feature Called "Insurance Profile" for Transmission of Fee Data and Implement Fees in Connection With This Feature

April 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2017, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule

<sup>37</sup> See *id.*

<sup>38</sup> 15 U.S.C. 78f(b)(5).

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>31</sup> See *id.* at 11, 18 and 26.

<sup>32</sup> The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

<sup>33</sup> The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

<sup>34</sup> See Amendment No. 1, *supra* note 6, at 41.

<sup>35</sup> See *id.* at 38.

<sup>36</sup> See *id.*

<sup>26</sup> See Amendment No. 2, *supra* note 6, at 3-4.

<sup>27</sup> See Amendment No. 1, *supra* note 6, at 38.

<sup>28</sup> See *id.* at 39.

<sup>29</sup> See *id.* at 43.

<sup>30</sup> See *id.* at 9, n.19.

change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and subparagraphs (f)(2)<sup>4</sup> and (f)(4)<sup>5</sup> of Rule 19b-4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's Rules & Procedures ("Rules") to broaden the scope of the Insurance & Retirement Processing Services ("I&RS"). The proposed rule change would enhance existing I&RS services to provide for a new data repository feature called "Insurance Profile" for transmission of data relating to fees, expenses, and Commissions ("Fee Data") and implement fees associated with this proposed feature.<sup>6</sup>

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

NSCC is proposing to provide certain NSCC Members (as defined below) with a centralized, automated and standardized data repository to transmit and receive Fee Data relating to IPS Eligible Products.<sup>7</sup> Such NSCC Members would include (i) insurance companies that are Insurance Carrier/Retirement Services Members ("Carriers"); and (ii) Carriers' intermediaries, such as broker-dealers, banks and insurance agencies, that are Members, Mutual Fund/Insurance Services Members and Data Services Only Members that distribute participating Carriers' insurance

products (collectively, Distributors," and, together with "Carriers," collectively referred to herein as "NSCC Members").

##### (i) Background

On April 6, 2016, the U.S. Department of Labor ("DOL") issued new regulations (collectively, "DOL Fiduciary Rule") regarding conflicts of interest in retirement investment advice.<sup>8</sup> The DOL Fiduciary Rule generally expands the type of investment advice that is subject to fiduciary standards under the Employee Retirement Income Security Act of 1974 ("ERISA").<sup>9</sup> Generally, under the new DOL Fiduciary Rule, advisors subject to fiduciary standards will be limited in receiving certain compensation for providing investment advice. In connection with the DOL Fiduciary Rule, the DOL also introduced a new exemption and modified existing exemptions to allow institutions to engage in certain compensation and fee practices that might otherwise violate fiduciary standards under ERISA rules if the institutions meet, among other things, certain disclosure requirements relating to Fee Data. To satisfy the disclosure requirements, Distributors will need to disclose to their customers to whom the Distributors provide covered investment advice certain Fee Data that is generated by Carriers. For example, Distributors may need to disclose certain direct Carrier fees and expenses, such as management fees, surrender charge rates, and standard commission schedule data ("Commission Schedule Data"),<sup>10</sup> and certain indirect Carrier fees and

expenses, such as third-party payments, revenue sharing, and marketing allowances.

Although I&RS currently provides communication links that connect participating Carriers and Distributors, these existing links do not provide Carriers with an efficient and centralized method to transmit Fee Data to Distributors. Through the existing links, Distributors would need to search for and retrieve information from multiple Carriers, and Carriers would need to respond to information requests from multiple Distributors, regarding the same IPS Eligible Products. In addition, Carriers would need to use multiple I&RS links to transmit all of the Fee Data required by the DOL Fiduciary Rule. As a result, such Fee Data would be transferred in different formats, depending on the method used to transmit the Fee Data. Further, in order to retrieve the Fee Data, Distributors would need to extract the Fee Data from multiple file types for each IPS Eligible Product.

Therefore, NSCC developed the Insurance Profile functionality at the request of and in consultation with industry participants. The proposed Insurance Profile functionality would provide Carriers and Distributors with a secure, centralized portal to allow Carriers to place all of the requested Fee Data for each IPS Eligible Product into a new data repository in a standardized data format. In this regard, the Insurance Profile repository would enable Carriers to submit, and Distributors to retrieve, Fee Data relating to IPS Eligible Products in one centralized location. Having the Fee Data in a centralized repository would streamline the Fee Data transfer and retrieval process for Carriers and Distributors, and it would avoid the need to send and retrieve Fee Data to and from various sources and in different formats.

##### (ii) Proposed Rule Changes

NSCC proposes to enhance existing I&RS services to create a new feature within I&RS, called Insurance Profile, that would enable Carriers to transmit Fee Data to Distributors, or to otherwise supply and provide access to Fee Data using a centralized repository.<sup>11</sup> Insurance Profile would be an optional feature, and users would have access to

<sup>8</sup> See Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, 29 CFR 2509, 2510, and 2550 (2016).

<sup>9</sup> Public Law 93-406, 88 Stat. 829 (codified in part as amended at 29 U.S.C. 1001-1461 (1982)). On March 2, 2017, the DOL published a proposal that would extend the April 10, 2017 applicability date of the DOL Fiduciary Rule by 60 days. See Department of Labor, Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption ((Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, 84-24 and 86-128," Proposed Rule, 82 FR 12319, (March 2, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-03-02/pdf/2017-04096.pdf>.

<sup>10</sup> Carriers publish schedules that list commission rates for products that Distributors earn upon the sale of the products. For example, a Carrier may provide that for the sale of a certain whole life policy, the Distributors will earn a commission of 100 percent of the premium for the first year. Carriers set the rates and then publish this data periodically. Those rates are then reviewed and approved by state regulatory authorities.

<sup>11</sup> Rule 57 generally provides that NSCC will not be responsible for the completeness or accuracy of any data transmitted between NSCC Members through I&RS, nor for any errors, omissions or delays which may occur in the absence of gross negligence on NSCC's part, in the transmission of such data between NSCC Members. See Rule 57, Section 1(j), *supra* note 6. The proposed changes to Rule 57 would be subject to these limitations.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> 17 CFR 240.19b-4(f)(4).

<sup>6</sup> Capitalized terms not defined herein are defined in the Rules, available at [http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf).

<sup>7</sup> An "IPS Eligible Product" is defined in the Rules and includes such insurance products, retirement or other benefit plans, or programs that are identified by NSCC as eligible for processing through its I&RS. See Rule 1, *supra* note 6.

the repository through either a full data subscription (“Full Data Subscription”) or a limited data subscription (“Limited Data Subscription”). The Full Data Subscription would allow for multiple intraday loading, storage, and transmission of all available Fee Data in the data repository. A Limited Data Subscription would allow for multiple intraday loading, storage, and transmission of either (i) Commission Schedule Data, or (ii) all Fee Data other than Commission Schedule Data, at the user’s choice. In addition, Distributors would have the ability to access the repository with a “User Web Interface Only” subscription. The User Web Interface Only subscription would allow Distributors to view and download Fee Data but would not include the ability to load, store, and transmit Fee Data using the data repository.<sup>12</sup>

NSCC Members would be provided with access to the repository based on their subscription type and in order to permit them to carry out their respective roles in the distribution of Fee Data. For example, Distributors subscribing to the User Web Interface Only subscription will only be able to download through web-based portal file downloads, while all other users would be able to download using mainframe-based file downloads. The file downloads would be functionally equivalent whether through mainframe-based file downloads or web-based portal file downloads, however, the mainframe-based file downloads would permit the downloading of more data at one time as compared to web-based portal file downloads.

NSCC also proposes to amend Addendum A of the Rules to include the fees for subscription to the Insurance Profile feature. The proposed fees would depend on whether the user has subscribed to a Full Data Subscription, a Limited Data Subscription, or a User Web Interface Only subscription. For a subscription that is not a User Web Interface Only Subscription, NSCC would charge (i) \$3,000 per month for a Full Data Subscription; and (ii) \$1,500 per month for a Limited Data Subscription. For a User Web Interface Only Subscription, NSCC would charge Distributors (i) \$500 per month, plus a \$1.25 per CUSIP download transaction charge for a Full Data Subscription; and (ii) \$250 per month, plus a \$1.25 per CUSIP download transaction charge for a Limited Data Subscription.

<sup>12</sup> Because Carriers would use the repository to load, transmit, and store Fee Data, Carriers would not have the option to subscribe to the User Web Interface Only, which only allows users to view and download Fee Data.

In addition, because the Fee Data being placed in Insurance Profile is intended to be used to satisfy disclosure requirements and is not intended to be used to commercialize the Fee Data retrieved therefrom, the proposed rule change would make it clear that users may not use, distribute, transmit, or otherwise make available Fee Data retrieved from Insurance Profile as the basis for or as a part of a data product or service offered for commercial gain to any other person without the prior written consent of NSCC.

## 2. Statutory Basis

Section 17A(b)(3)(F) of the Act<sup>13</sup> requires, in part, that the Rules be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The proposed rule change would enhance NSCC Members’ ability to access and retrieve Fee Data information in a standardized and automated format and in a secure, centralized location. By streamlining the ability of NSCC Members to transmit and retrieve Fee Data between each other, NSCC believes that the proposed rule change would foster cooperation and coordination with NSCC Members engaged in the clearance and settlement of securities, consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>14</sup>

Section 17A(b)(3)(D) of the Act<sup>15</sup> requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the proposed rule change to Addendum A is consistent with this provision of the Act because the proposed fees would align with the cost of delivering the proposed Insurance Profile feature to NSCC Members, and such fees would be allocated equitably among the NSCC Members that subscribe for Insurance Profile. Therefore, by establishing fees that align with the cost of delivery of this feature and allocating those fees equitably among the subscribing NSCC Members, the proposed rule change would provide for the equitable allocation of reasonable dues, fees and other charges among its participants consistent with the requirements of Section 17A(b)(3)(D) of the Act.<sup>16</sup>

### (B) Clearing Agency’s Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any

adverse impact, or impose any burden, on competition because the proposed rule change would add an optional function to NSCC’s services that would provide a more efficient method by which subscribing Carriers and Distributors may transmit and receive Fee Data. Therefore, as an optional feature available for subscription, the proposed rule change would not disproportionately impact any NSCC Members.

Moreover, because the proposed rule change would improve the efficiency by which subscribing NSCC Members may transmit Fee Data and satisfy their disclosure requirements, the proposed rule change may have a positive effect on competition among Carriers and Distributors. The proposed feature would provide these firms with a faster, more streamlined method of transmitting and receiving Fee Data, and therefore would enable IPS Eligible Products to be marketed more quickly. Specifically, Distributors would have the ability to distribute IPS Eligible Products into the market to consumers more quickly because Distributors would have the ability to satisfy their Fee Data disclosure requirements with respect to such IPS Eligible Products on a timely basis using the proposed Insurance Profile.

### (C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments it receives.

## 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)<sup>17</sup> of the Act and subparagraphs (f)(2)<sup>18</sup> and (f)(4)<sup>19</sup> of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>13</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>14</sup> *Id.*

<sup>15</sup> 15 U.S.C. 78q–1(b)(3)(D).

<sup>16</sup> *Id.*

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b–4(f)(2).

<sup>19</sup> 17 CFR 240.19b–4(f)(4).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2017-003 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NSCC-2017-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 NSCC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2017-003 and should be submitted on or before May 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-07459 Filed 4-12-17; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-80398; File No. SR-NYSE-2017-15]**

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove Section 204.25 (Treasury Stock Changes) From the NYSE Listed Company Manual**

April 7, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 27, 2017, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to remove Section 204.25 ("Treasury Stock Changes") from the NYSE Listed Company Manual (the "Manual"). The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

set forth in sections A, B, and C below, of the most significant parts of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The Exchange proposes to remove Section 204.25 ("Treasury Stock Changes") from the Manual.

Section 204.25 provides that if issued and listed stock of a listed company is reacquired or disposed of, directly or indirectly, for the account of the company, the Exchange is required to receive notice of such transaction within ten days after the close of the fiscal quarter in which it occurs. This notice need state only the total number of shares reacquired (shares of a company's own stock acquired by the company and held for its own account are typically referred to as "treasury shares") or disposed of during the quarter and the balance held by the company at the end of the quarter. If, during such quarter, there were both reacquisitions and dispositions, the total amount reacquired and the total amount disposed of should be stated. The only purposes for which the Exchange generally uses treasury share information is for determining compliance with its shareholder approval requirements in relation to share issuances and for calculating annual listing fees.

The Exchange believes it is unnecessary to require listed companies to submit this information on a quarterly basis as it has not regularly relied on this information for any regulatory purpose for many years.<sup>4</sup> In the event that the Exchange needs information about a listed company's treasury stock position, it will either request that information from the company in question or it will obtain it by reviewing the company's financial statements included in its Form 10-K or Form 10-Q. In addition, the Exchange notes that the primary purpose for which it uses treasury share data is for purposes of analyzing transactions under Sections 312.03 ("Shareholder Approval") and 303A.08 ("Shareholder Approval of Equity Compensation

<sup>4</sup> A listed company's treasury stock position was significant at one time, as listed companies were able to reissue treasury shares without giving rise to any shareholder approval requirements under Section 312.03 of the Manual. Since the adoption of Section 312.04(j), issuances of treasury shares are treated like any other issuance of common stock for purposes of Section 312.03. See Securities Exchange Act Release No. 54999 (December 21, 2006); 72 FR 170 (January 3, 2007) (SR-NYSE-2006-30).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Plans”).<sup>5</sup> To that end, the Exchange notes that Part 1 of Section 703.01 of the Manual provides that, in the event a company is issuing shares from treasury in a transaction or series of related transactions, it must notify the Exchange in writing in advance of the issuance, indicating whether shareholder approval is required pursuant to Sections 303A.08 or 312.03 and, if required, the date such shareholder approval was obtained.<sup>6</sup> In addition, the Exchange notes that the form of subsequent listing application companies must complete whenever they apply to list additional shares requires the company to provide information about the total number of shares outstanding at the time of entering into a definitive agreement in connection with the applicable transaction, as well as the number of shares held in treasury at that time. This requirement enables the Exchange to calculate the percentage of the company’s then outstanding shares represented by the shares issued in the transaction and thereby ensure that companies are complying with the shareholder approval requirements of Section 312.03.

Section 902.03 of the Manual provides that companies must pay annual listing fees on all shares outstanding, including treasury shares. The Exchange bills companies for annual fees each year based on the number of shares outstanding as of the previous December 31 (including treasury shares) as reported to the Exchange for that purpose by the company’s transfer agent. As such, the information currently provided to the Exchange by companies pursuant to Section 204.25 with respect to changes in companies’ treasury share positions is not needed in connection with the Exchange’s billing procedures.

The Exchange notes that it does not rely on treasury share reporting under Section 204.25 in monitoring compliance with its continued listing standards with respect to market capitalization and publicly-held shares. Rather, the Exchange relies on the number of shares outstanding as reported on a quarterly basis [sic] on the cover of a company’s annual report filed with the SEC and (where applicable) Form 10-Qs. We also check these

<sup>5</sup> Exchange rules do not impose any substantive restrictions on listed companies’ ability to repurchase their own stock.

<sup>6</sup> If the issuance involves both shares issued from treasury and newly issued, the company may include this notification in the subsequent listing application that the company files to list the newly issued shares.

requirements against information provided by the market data vendors.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed rule change is consistent with these goals in that it is designed to protect the public interest, because the information gathered pursuant to the current treasury stock reporting requirement can be obtained directly from the applicable listed company or from its public filings on an as-needed basis and is also provided in connection with every subsequent listing application.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to remove a treasury share reporting requirement imposed on all listed companies because the Exchange can obtain that information from public disclosures or from the applicable listed company or from its public filings on an as-needed basis. As such, the proposed amendment will not impose any burden on competition.

### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-15 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSE-2017-15. 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2017-15 and should be submitted on or before May 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-07455 Filed 4-12-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80396; File No. SR-NSCC-2017-801]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Enhance the Credit Risk Rating Matrix and Make Other Changes

April 7, 2017.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> notice is hereby given that on March 22, 2017, National Securities Clearing Corporation ("NSCC") filed with the Securities and

Exchange Commission ("Commission") the advance notice SR-NSCC-2017-801 ("Advance Notice") as described in Items I, II and III below, which Items have been prepared by NSCC.<sup>3</sup> The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of proposed modifications to NSCC's Rules and Procedures ("Rules").<sup>4</sup> The proposed rule change would amend the Rules in order to (i) enhance the matrix (hereinafter referred to as the "Credit Risk Rating Matrix" or "CRRM")<sup>5</sup> developed by NSCC to evaluate the risks posed by certain Members ("CRRM-Rated Members") to NSCC and its Members from providing services to these CRRM-Rated Members and (ii) make other amendments to the Rules to provide more transparency and clarity regarding NSCC's current ongoing membership monitoring process.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

##### (A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments relating to this proposal have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

<sup>3</sup> On March 22, 2017, NSCC filed this Advance Notice as a proposed rule change (SR-NSCC-2017-002) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4, 17 CFR 240.19b-4. A copy of the proposed rule change is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

<sup>4</sup> Capitalized terms not defined herein are defined in the Rules, available at [http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nsccl\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nsccl_rules.pdf).

<sup>5</sup> The proposed rule changes with respect to the enhancement of the CRRM are reflected in the inclusion of (i) qualitative factors and examples thereof in the proposed new definition for "Credit Risk Rating Matrix" in Rule 1 and (ii) Members that are foreign banks or trust companies that have audited financial data that is publicly available in Section 4(b)(i) of Rule 2B.

##### (B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

##### Nature of the Proposed Change

The proposed rule change would, among other things, enhance the CRRM to enable it to rate Members that are foreign banks or trust companies and have audited financial data that is publicly available. It would also enhance the CRRM by allowing it to take into account qualitative factors when generating credit ratings for Members. In addition, it would enhance the CRRM by shifting it from a relative scoring approach to an absolute scoring approach.

This rule filing also contains proposed rule changes that are not related to the proposed CRRM enhancements but that provide specificity, clarity and additional transparency to the Rules related to NSCC's current ongoing membership monitoring process.

##### (i) Background

NSCC occupies an important role in the securities settlement system by interposing itself as a central counterparty between Members that are counterparties to transactions accepted for clearing by NSCC, thereby reducing the risk faced by Members. NSCC uses the CRRM, the Watch List (as defined below) and the enhanced surveillance to manage and monitor default risks of Members on an ongoing basis, as discussed below. The level and frequency of such monitoring for a Member is determined by the Member's risk of default as assessed by NSCC. Members that are deemed by NSCC to pose a heightened risk to NSCC and its Members are subject to closer and more frequent monitoring.

##### Existing Credit Risk Rating Matrix

In 2005, the Commission approved a proposed rule change filed by NSCC ("Initial Filing")<sup>6</sup> to establish new criteria for placing certain Members on a list for closer monitoring ("Watch List").

NSCC proposed in the Initial Filing that all U.S. broker-dealers and U.S. banks that were Members would be assigned a rating generated by entering financial data of those Members into an internal risk assessment matrix, *i.e.*, the CRRM. However, the text of the current Rule 2B, Section 4, does not specify which Members are CRRM-Rated Members and whether non-CRRM-Rated

<sup>6</sup> See Securities Exchange Act Release No. 51362 (March 11, 2005), 70 FR 13562 (March 21, 2005) (SR-NSCC-2003-11).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

Members may be included on the Watch List.

Currently, Members that are U.S. broker-dealers and U.S. banks are assessed against the CRRM and assigned a credit rating based on certain quantitative factors.<sup>7</sup> Unfavorably-rated Members are placed on the Watch List. In addition, NSCC credit risk staff may downgrade a particular Member's credit rating based on various qualitative factors. An example of such qualitative factors might be that the Member in question received a qualified audit opinion on its annual audit. NSCC believes that, in order to protect NSCC and its other Members, it is important that credit risk staff maintain the discretion to downgrade a Member's credit rating on the CRRM and thus subject the Member to closer monitoring.

The current CRRM is comprised of two credit rating models—one for the U.S. broker-dealers and one for the U.S. banks—and generates credit ratings for the relevant Members based on a 7-point rating system, with “1” being the strongest credit rating and “7” being the weakest credit rating.

Over time, the current CRRM has not kept pace with NSCC's evolving membership base and heightened expectations from regulators and stakeholders for robustness of financial models. Specifically, the current CRRM only generates credit ratings for those Members that are U.S. banks or U.S. broker-dealers that file standard reports with their regulators. Although these types of Members currently represent the vast majority (approximately 95%) of Members at NSCC,<sup>8</sup> foreign banks and trust companies are expected to be a growing category of NSCC's membership base in the future, and the proposed enhancements to the CRRM would enable it to assign credit ratings to these entities. Foreign banks and trust companies are typically large global financial institutions that have complex businesses and conduct a high volume of activities. Although foreign banks and trust companies are not currently rated by the CRRM, they are monitored by NSCC's credit risk staff using financial criteria deemed relevant by NSCC and can be placed on the Watch List if they experience a financial change that presents risk to NSCC. Given the

potential increase in the number of Members that are foreign banks or trust companies in the coming years, there is a need to formalize NSCC's credit risk evaluation process of these Members by assigning credit ratings to them in order to better facilitate the comparability of credit risks among Members.<sup>9</sup>

In addition, the current CRRM assigns each Member that is a U.S. bank or U.S. broker-dealer and that files standard reports with its regulator(s) a credit rating based on inputting certain quantitative data relative to the applicable Member into the CRRM. Accordingly, a Member's credit rating is currently based solely upon quantitative factors. It is only after the CRRM has generated a credit rating with respect to a particular Member that such Member's credit rating may be downgraded manually by credit risk staff, after taking into consideration relevant qualitative factors. The inability of the current CRRM to take into account qualitative factors requires frequent and manual overrides by credit risk staff, which may result in inconsistent and/or incomplete credit ratings for Members.

Furthermore, the current CRRM uses a relative scoring approach and relies on peer grouping of Members to calculate the credit rating of a Member. This approach is not ideal because a Member's credit rating can be affected by changes in its peer group even if the Member's financial condition is unchanged.

#### Proposed Credit Risk Rating Matrix Enhancements

To improve the coverage and the effectiveness of the current CRRM, NSCC is proposing three enhancements. The first proposed enhancement would expand the scope of CRRM coverage by enabling the CRRM to generate credit ratings for Members that are foreign banks or trust companies and that have audited financial data that is publicly available. The second proposed enhancement would incorporate qualitative factors into the CRRM and therefore is expected to reduce the need and the frequency of manual overrides of Member credit ratings. The third enhancement would replace the relative scoring approach currently used by CRRM with a statistical approach to

estimate the absolute probability of default of each Member.

#### A. Enable the CRRM to Generate Credit Ratings for Foreign Bank or Trust Company Members

The current CRRM is comprised of two credit rating models—one for the U.S. broker-dealers and one for the U.S. banks. NSCC is proposing to enhance the CRRM by adding an additional credit rating model for the foreign banks and trust companies. The additional model would expand the membership classes to which the CRRM would apply to include Members that are foreign banks or trust companies and that have audited financial data that is publicly available. The CRRM credit rating of a Member that is a foreign bank or trust company would be based on quantitative factors, including size, capital, leverage, liquidity, profitability and growth, and qualitative factors, including market position and sustainability, information reporting and compliance, management quality, capital management and business/product diversity. By enabling the CRRM to generate credit ratings for these Members, the enhanced CRRM would provide more comprehensive credit risk coverage of NSCC's membership base.

With the proposed enhancement to the CRRM as described above, applicable foreign bank or trust company Members would be included in the CRRM process and be evaluated more effectively and efficiently because financial data with respect to these foreign bank or trust company Members could be extracted from data sources in an automated form.<sup>10</sup>

After the proposed enhancement, CRRM would be able to generate credit ratings on an ongoing basis for all Members that are U.S. banks, U.S. brokers-dealers and foreign banks and trust companies, which together represent approximately 96% of the NSCC Members.<sup>11</sup>

#### B. Incorporate Qualitative Factors Into the CRRM

In addition, as proposed, the enhanced CRRM would blend qualitative factors with quantitative factors to produce a credit rating for each applicable Member in relation to

<sup>7</sup> Quantitative factors considered by NSCC include (a) for broker dealers, size (*i.e.*, total excess net capital), capital, leverage, liquidity, and profitability and (b) for banks, size, capital, asset quality, earnings, and liquidity.

<sup>8</sup> As of March 16, 2017, there are 155 Members. Of the 155 Members, 11 (or 7%) are U.S. banks, 136 (or 88%) are U.S. broker-dealers and one (or 1%) is a foreign bank or trust company.

<sup>9</sup> CRRM is applied across NSCC and its affiliated clearing agencies, Fixed Income Clearing Corporation (“FICC”) and The Depository Trust Company (“DTC”). Specifically, in order to run the CRRM, credit risk staff uses the financial data of the applicable NSCC Members in addition to data of applicable members and participants of FICC and DTC, respectively. In this way, each applicable NSCC Member is rated against other applicable members and participants of FICC and DTC, respectively.

<sup>10</sup> Currently, these Members are monitored by NSCC credit risk staff that review similar criteria as those reviewed for CRRM-Rated Members, but such review occurs outside of the CRRM process.

<sup>11</sup> As of March 16, 2017, there are 7 Members that would not be rated by the enhanced CRRM, as proposed, because they are central securities depositories, securities exchanges and U.S. trust companies that do not file Call Reports (as defined below).

the Member's credit risk. For U.S. and foreign banks and trust companies, the enhanced CRRM would use a 70/30 weighted split between quantitative and qualitative factors to generate credit ratings. For U.S. broker-dealers, the weight split between quantitative and qualitative factors would be 60/40. These weight splits are chosen by NSCC based on the industry best practice as well as research and sensitivity analysis conducted by NSCC. NSCC would review and adjust the weight splits as well as the quantitative and qualitative factors, as needed, based on recalibration of the CRRM to be conducted by NSCC approximately every three to five years.

Although there are advantages to measuring credit risk quantitatively, quantitative evaluation models alone are incapable of fully capturing all credit risks. Certain qualitative factors may indicate that a Member is or will soon be undergoing financial distress, which may in turn signal a higher default exposure to NSCC and its other Members. As such, a key enhancement being proposed to the CRRM is the incorporation of relevant qualitative factors into each of the three credit rating models mentioned above. By including qualitative factors in the three credit rating models, the enhanced CRRM would capture risks that would otherwise not be accounted for with quantitative factors alone.<sup>12</sup> Adding qualitative factors to the CRRM would not only enable it to generate more consistent and comprehensive credit ratings for applicable Members, but it would also help reduce the need and frequency of manual credit rating overrides by the credit risk staff because overrides would likely only be required under more limited circumstances.<sup>13</sup>

### C. Shifting From Relative Scoring to Absolute Scoring

As proposed, the enhanced CRRM would use an absolute scoring approach and rank each Member based on its

<sup>12</sup> The initial set of qualitative factors that would be incorporated into the CRRM includes (a) for U.S. broker dealers, market position and sustainability, management quality, capital management, liquidity management, geographic diversification, business/product diversity and access to funding, (b) for U.S. banks, environment, compliance/litigation, management quality, liquidity management and parental demands and (c) for foreign banks and trust companies, market position and sustainability, information reporting and compliance, management quality, capital management and business/product diversity.

<sup>13</sup> Once a Member is assigned a credit rating, if circumstances warrant, credit risk staff would still have the ability to override the CRRM-issued credit rating by manually downgrading such rating as they do today. To ensure a conservative approach, the CRRM-issued credit ratings cannot be manually upgraded.

individual probability of default rather than the relative scoring approach that is currently in use. This proposed change is designed to have a Member's CRRM-generated credit rating reflect an absolute measure of the Member's default risk and eliminate any potential distortion of a Member's credit rating from the Member's peer group that may occur under the relative scoring approach used in the existing CRRM.

### D. Watch List and Enhanced Surveillance

In addition to the Watch List, NSCC also maintains an enhanced surveillance list (referenced herein and in the proposed rule text as "enhanced surveillance") for membership monitoring. The enhanced surveillance list is generally used when Members are undergoing drastic and unexpected changes in their financial conditions or operation capabilities and thus are deemed by NSCC to be of the highest risk level and/or warrant additional scrutiny due to NSCC's ongoing concerns about these Members. Accordingly, Members that are subject to enhanced surveillance are reported to NSCC's management committees and are also regularly reviewed by a cross-functional team comprised of senior management of NSCC. More often than not, Members that are subject to enhanced surveillance are also on the Watch List. The group of Members that is subject to enhanced surveillance is generally much smaller than the group on the Watch List. The enhanced surveillance list is an internal tool for NSCC that triggers increased monitoring of a Member above the monitoring that occurs when a Member is on the Watch List.

A Member could be placed on the Watch List either based on its credit rating of 5, 6 or 7, which can either be generated by the CRRM or from a manual downgrade, or when NSCC deems such placement as necessary to protect NSCC and its Members. In contrast, a Member would be subject to enhanced surveillance only when close monitoring of the Member is deemed necessary to protect NSCC and its Members.

The Watch List and enhanced surveillance tools are not mutually exclusive; they may complement each other under certain circumstances. A key distinction between the Watch List and enhanced surveillance is that being placed on the Watch List may result in Required Deposit<sup>14</sup> related

<sup>14</sup> See Rule 4 (Section 1). The "Required Deposit" is the amount that each Member is required to

consequences under the Rules, whereas enhanced surveillance does not.<sup>15</sup> For example, a Member that is in a precarious situation could be placed on the Watch List and be subject to enhanced surveillance; however, because the Watch List status could increase a Member's Required Deposit, when NSCC has preliminary concerns about a Member, to avoid potential increase to a Member's Required Deposit, NSCC may opt not to place the Member on the Watch List until it is certain that such concerns would not be alleviated in the short-term. Instead, in such a situation, NSCC might first subject the Member to enhanced surveillance in order to closely monitor the Member's situation without affecting the Member's Required Deposit. If the Member's situation improves, then it will no longer be subject to enhanced surveillance. If the situation of the Member worsens, the Member may then be placed on the Watch List as deemed necessary by NSCC.

### (ii) Detailed Description of the Proposed Rule Changes Related to the Proposed CRRM Enhancements

In connection with the proposed enhancements to the CRRM, NSCC proposes to amend the Rules to (1) incorporate qualitative factors into CRRM and (2) add Members that are foreign banks or trust companies to the categories of Members that would be assigned credit ratings by NSCC using the CRRM.

#### A. Proposed Changes to Rule 1 (Definitions and Descriptions)

NSCC is proposing to include qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management in the proposed new definition for "Credit Risk Rating Matrix" in Rule 1 because, as proposed, the enhanced CRRM would blend both qualitative factors and quantitative factors to produce a credit rating for each applicable Member.

#### B. Proposed Changes to Section 4(b)(i) of Rule 2B (Ongoing Membership Requirements and Monitoring)

NSCC is proposing to expand the membership types to which the CRRM would apply to include Members that are foreign banks or trust companies and that have audited financial data that is

deposited in NSCC's Clearing Fund. Rules, *supra* note 4.

<sup>15</sup> NSCC expects to provide additional clarity to Members regarding the Watch List and its impact on Required Deposit in a subsequent proposed rule change to be filed with the Commission in 2017.

publicly available by amending Section 4 of Rule 2B.

The enhanced CRRM would assign credit ratings for each Member that is a foreign bank or trust company based on its publicly available audited financial data. The credit rating would be based on an 18-point scale, which is then mapped to the 7-point rating system currently in use today, with “1” being the strongest credit rating and “7” being the weakest credit rating.

### (iii) Other Proposed Rule Changes

This rule filing also contains proposed rule changes that are unrelated to the proposed enhancement of the CRRM. These proposed rule changes would provide specificity, clarity and additional transparency to the Rules with respect to NSCC’s current ongoing membership monitoring process, as described below.

#### A. Proposed Changes to Rule 1 (Definitions and Descriptions)

NSCC is proposing to amend Rule 1 to add definitions for the CRRM and the Watch List.

The proposed definition of the CRRM would provide that the term “Credit Risk Rating Matrix” means a matrix of credit ratings of Members as specified in Section 4 of Rule 2B. The definition would state that the CRRM is developed by NSCC to evaluate the credit risk such Members pose to NSCC and its Members and is based on factors determined to be relevant by NSCC from time to time, which factors are designed to collectively reflect the financial and operational condition of a Member. The proposed definition would state that, in addition to the proposed qualitative factors described above, these factors include quantitative factors, such as capital, assets, earnings and liquidity.

The proposed definition of the Watch List would provide that the term “Watch List” means, at any time and from time to time, the list of Members whose credit ratings derived from the CRRM are 5, 6 or 7, as well as Members and Limited Members that, based on NSCC’s consideration of relevant factors, including those set forth in Section 4(d) of Rule 2B (described below), are deemed by NSCC to pose a heightened risk to NSCC and its Members.

#### B. Proposed Changes to Rule 2B (Ongoing Membership Requirements and Monitoring)

##### Section 2B of Rule 2B

NSCC is proposing to amend Section 2B of Rule 2B to state that NSCC may review the financial responsibility and operational capability of each Member

and may otherwise require additional reporting from the Member regarding its financial or operational condition that may (1) include information regarding the businesses and operations of the Member and its risk management practices with respect to NSCC’s services utilized by the Member for another Person and (2) result in the Member being placed on the Watch List and/or being subject to enhanced surveillance as determined by NSCC.

Members are direct participants of NSCC. However, there are firms that rely on the services provided by Members in order to have their activity cleared and settled through NSCC’s facilities (the “indirect participants”). These indirect participants pose certain risks to NSCC that need to be identified and monitored as part of NSCC’s ongoing member due diligence process. In order for NSCC to understand (1) the material dependencies between Members and the indirect participants that rely on the Members for the clearance and settlement of the indirect participants’ transactions, (2) significant Member-indirect participant relationships and (3) the various risk controls and mitigants that these Members employ to manage their risks with respect to such relationships, NSCC may request information from Members regarding the Members’ businesses and operations as well as their risk management practices with respect to services of NSCC utilized by the Members for indirect participants. The information provided by Members would then be taken into consideration by NSCC when determining whether a Member may need to be placed on the Watch List, be subject to enhanced surveillance or both.

##### Section 4 of NSCC Rule 2B

NSCC is proposing to amend Section 4 of Rule 2B in order to (1) specify the membership types that are currently subject to NSCC’s ongoing monitoring and review, (2) clarify which U.S. broker-dealers and U.S. banks will be assigned a credit rating by NSCC in accordance with the CRRM, (3) provide that NSCC may manually downgrade a CRRM-Rated Member’s credit rating in certain instances, (4) provide that NSCC may place non-CRRM-Rated Members and certain Limited Members on the Watch List and/or subject them to enhanced surveillance, if necessary, (5) describe some of the factors that could be taken into consideration by NSCC when downgrading a Member’s or Limited Member’s credit rating, placing a Member or Limited Member on the Watch List and/or subjecting a Member or Limited Member to enhanced

surveillance, (6) allow NSCC to collect additional deposits to the Clearing Fund and to retain deposits in excess of the Required Deposit from Members or Limited Members that are on the Watch List and (7) provide for enhanced monitoring of Members or Limited Members that are on the Watch List and/or are subject to enhanced surveillance.

In connection with the forgoing, NSCC proposes to delete the current first paragraph in Section 4 of NSCC Rule 2B and add the following:

1. Section 4(a), specifying that NSCC currently monitors and reviews all Members and certain Limited Members on an ongoing and periodic basis, which may include monitoring news and market developments relating to these Members and Limited Members and conducting reviews of financial reports and other public information of these Members and Limited Members.

2. Section 4(b)(i), clarifying that (1) Members that are (A) U.S. banks or trust companies that file the Consolidated Report of Condition and Income (“Call Report”) or (B) U.S. broker-dealers that file the Financial and Operational Combined Uniform Single Report (“FOCUS Report”) or the equivalent with their regulators, would be assigned a credit rating by NSCC in accordance with the CRRM and (2) each CRRM-Rated Member’s credit rating would be reassessed upon receipt of additional information from the Member.

3. Section 4(b)(ii), providing that, because the factors used as part of the CRRM may not identify all risks that a Member may pose to NSCC, NSCC may, in addition to other actions permitted by the Rules, downgrade the Member’s credit rating derived from the CRRM if NSCC believes the CRRM-generated rating is insufficiently conservative or if it deems such downgrade as necessary to protect NSCC and its Members. Depending on the credit rating of the Member, a downgrade may result in the Member being placed on the Watch List and/or being subject to enhanced surveillance based on relevant factors.

4. Section 4(c), specifying that, other than CRRM-Rated Members, NSCC may place Members and Limited Members that are monitored and reviewed by NSCC on the Watch List and/or subject them to enhanced surveillance even though they are not being assigned credit ratings by NSCC in accordance with the CRRM.

5. Section 4(d), describing some of the factors that could be taken into consideration by NSCC when downgrading a Member’s credit rating, placing a Member or Limited Member on the Watch List and/or subjecting a

Member or Limited Member to enhanced surveillance. These factors include but are not limited to (i) news reports and/or regulatory observations that raise reasonable concerns relating to the Member or Limited Member, (ii) reasonable concerns around the Member's or Limited Member's liquidity arrangements, (iii) material changes to the Member's or Limited Member's organizational structure, (iv) reasonable concerns of NSCC about the Member's or Limited Member's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the Member or Limited Member to demonstrate satisfactory financial condition or operational capability or if NSCC has a reasonable concern regarding the Member's or Limited Member's ability to maintain applicable membership standards and (vi) failure of the Member or Limited Member to provide information required by NSCC to assess risk exposures posed by the Member's or Limited Member's activity.

6. Section 4(e), allowing NSCC to (1) require a Member or Limited Member that has been placed on the Watch List to make and maintain additional deposits to the Clearing Fund and (2) withhold any deposit in excess of the Required Deposit of a Member or Limited Member that has been placed on the Watch List as provided in Section 9 of Rule 4.

7. Section 4(f), providing that NSCC would, in addition to other actions permitted by the Rules, conduct a more thorough monitoring of the financial condition and/or operational capability of, and require more frequent financial disclosures from, not only those Members and Limited Members that are placed on the Watch List but also Members and Limited Members subject to enhanced surveillance, including examples of how the monitoring could be conducted and the types of disclosures that may be required. In addition, Members and Limited Members that are subject to enhanced surveillance would be reported to NSCC's management committees and regularly reviewed by a cross-functional team comprised of senior management of NSCC.

In addition to the proposed changes described above, NSCC is proposing to make technical corrections to the second paragraph of Section 4 of Rule 2B to (1) renumber the paragraph as Section 4(g), (2) update an internal cross reference and (3) clarify that the references in the paragraph to Members under surveillance are referring to Members on the Watch List.

#### C. Proposed Changes to Rule 4 (Clearing Fund)

NSCC is proposing to amend Section 9 of Rule 4 to clarify that NSCC may, in its discretion, withhold all or part of any excess Clearing Fund deposit of Members that are on the Watch List.

#### D. Proposed Changes to Procedure XV (Clearing Fund Formula and Other Matters)

NSCC is proposing to amend Section I(B)(1) of Procedure XV to clarify that Members or Limited Members that are placed on the Watch List would be required to make additional Clearing Fund deposits, as determined by NSCC.

In addition, NSCC is proposing to make the following technical corrections to Section I(B)(1) of Procedure XV, (i) renumber the final three paragraphs as Section I(B)(2) and title the new subsection "Family Issued Securities" to reflect the different subject matter of the new subsection, (ii) capitalize references to the Credit Risk Rating Matrix to reflect the proposed addition of the defined term to Rule 1 and (iii) make other grammatical corrections to the new Section I(B)(2).

Finally, NSCC is proposing to amend Section II(C) of Procedure XV to clarify that, although NSCC would not request additional Clearing Fund deposits from Members unless they exceed a predetermined threshold, such floor would not apply to Members or Limited Members that are on the Watch List.

#### E. Additional Proposed Changes to Rule 1 (Definitions and Descriptions) and Procedure XV (Clearing Fund Formula and Other Matters)

NSCC is proposing to amend the definition of "Illiquid Position" in Rule 1 as well as Procedure XV Sections I(A)(1) and I(A)(2), each as proposed in connection with a separate proposed rule change filed with the Commission but not yet approved.<sup>16</sup> Specifically, the proposed amendments would replace and conform references to "credit risk matrix" with "Credit Risk Rating Matrix" in the proposed definition of "Illiquid Position" in Rule 1 as well as Procedure XV Sections I(A)(1) and I(A)(2).

#### Implementation Timeframe

Pending Commission approval, NSCC expects to implement this proposal promptly. Members would be advised of the implementation date of this proposal through issuance of a NSCC Important Notice.

<sup>16</sup> See Securities Exchange Act Release No. 80260 (March 16, 2017), 82 FR 14781 (March 22, 2017) (SR-NSCC-2017-001).

#### Expected Effect on Risks to the Clearing Agency, Its Participants and the Market

The proposed rule changes would mitigate counterparty credit risk for NSCC by allowing NSCC to more accurately monitor the creditworthiness and risk profile of its Members. The enhanced CRRM would provide a more robust credit rating methodology by incorporating qualitative factors and adopting an absolute scoring approach. Both of these enhancements would improve NSCC's ability to monitor the credit risk of its Members and are expected to lessen the frequency of manual overrides. The enhanced CRRM would also expand the coverage of NSCC's membership by providing credit ratings for Members that are foreign banks or trust companies, which are not covered under the existing CRRM.

By mitigating counterparty credit risk for NSCC as described above, the enhanced CRRM would also mitigate risk for Members because lowering the risk profile for NSCC would in turn lower the risk exposure that Members may have with respect to NSCC in its role as a central counterparty.

#### Management of Identified Risks

The proposed rule changes are designed to mitigate counterparty credit risk for NSCC and to provide greater clarity and transparency to Members regarding the counterparty credit risk management approach used by NSCC.

The enhanced CRRM would improve NSCC's ability to monitor the probability of default for Members that are rated by the CRRM and is expected to lessen the need and the frequency of manual downgrades due to the anticipated improvement in the accuracy of the credit ratings generated by the enhanced CRRM.

NSCC employs a risk-based approach to conducting monitoring and review of its Members by using the CRRM to identify higher risk Members. Once identified, NSCC would place these Members on the Watch List, which would result in more frequent review by NSCC of these Members than the other Members. For Members that are placed on the Watch List, NSCC would conduct more thorough monitoring of these Members' financial condition and/or operational capability, which could include, for example, on-site visits or additional due diligence information requests.

Members that have been placed on the Watch List may also be required to maintain a higher deposit to the Clearing Fund, which would help offset potential risks to NSCC and its Members arising from activity submitted by these Members.

The enhanced CRRM would also expand the coverage of NSCC's membership by providing credit ratings for foreign banks and trust companies, which are not currently rated under the existing CRRM. The addition of these entities would allow NSCC to employ its risk-based approach to identify those higher risk Members for additional monitoring with more efficiency (by reducing the need for manual overrides) and effectiveness (by generating a more comprehensive and accurate credit rating after taking into account both quantitative and qualitative factors and adopting the absolute scoring approach).

Thus, the enhanced CRRM would help NSCC to identify those Members that could present credit risk to NSCC, which then would allow NSCC to better manage the potential risks from these Members.

#### Consistency With the Clearing Supervision Act

The proposed enhancements to the CRRM as described in detail above would be consistent with Section 805(b) of Clearing Supervision Act.<sup>17</sup> The objectives and principles of Section 805(b) of the Clearing Supervision Act include, among other things, the promotion of robust risk management.<sup>18</sup>

By enhancing the CRRM to enable it to assign credit ratings to Members that are foreign banks or trust companies and that have audited financial data that is publicly available, the proposed rule change would expand the CRRM's applicability to a wider group of Members, which would improve NSCC's membership monitoring process and promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

Similarly, by enhancing the CRRM to enable it to incorporate qualitative factors when assigning a Member's credit rating, the proposed change would enable NSCC to take into account relevant qualitative factors in an automated and more effective manner when monitoring the credit risks presented by the Members, which would improve NSCC's membership monitoring process overall and promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

Likewise, by enhancing the CRRM to shift from a relative scoring approach to an absolute scoring approach when assigning a Member's credit rating, the proposed rule change would enable

NSCC to generate credit ratings for Members that are more reflective of the Members' default risk, which would improve NSCC's membership monitoring process and promote robust risk management, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed enhancements to the CRRM are consistent with Rule 17Ad-22(e)(3)(i) under the Act, which was recently adopted by the Commission.<sup>19</sup> Rule 17Ad-22(e)(3)(i) will require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing risks that arise in or are born by NSCC, which includes \* \* \* systems designed to identify, measure, monitor and manage the range of risks that arise in or are borne by NSCC.<sup>20</sup> The proposed enhancements to the CRRM have been designed to assist NSCC in identifying, measuring, monitoring and managing the credit risks to NSCC posed by its Members. The proposed enhancements to the CRRM accomplish this by (i) expanding the CRRM's applicability to a wider group of Members to include Members that are foreign banks or trust companies, (ii) enabling the CRRM to take into account relevant qualitative factors in an automated and more effective manner when monitoring the credit risks presented by Members and (iii) enabling the CRRM to generate credit ratings for Members that are more reflective of the Members' default risk by shifting to an absolute scoring approach, all of which would improve NSCC's membership monitoring process overall. Therefore, NSCC believes the proposed enhancements to the CRRM would assist NSCC in identifying, measuring, monitoring and managing risks that arise in or are born by NSCC, consistent with the requirements of Rule 17Ad-22(e)(3)(i).

The proposed rule change to Section 2B of Rule 2B with respect to the scope of information that may be requested by NSCC from its Members has been designed to be consistent with Rule 17Ad-22(e)(19) under the Act, which was recently adopted by the

<sup>19</sup> 17 CFR 240.17Ad-22(e)(3)(i). The Commission adopted amendments to Rule 17Ad-22, including the addition of new subsection 17Ad-22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). FICC is a "covered clearing agency" as defined by the new Rule 17Ad-22(a)(5) and must comply with new subsection (e) of Rule 17Ad-22 by April 11, 2017. *Id.*

<sup>20</sup> *Id.*

Commission.<sup>21</sup> Rule 17Ad-22(e)(19) will require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risk to NSCC arising from arrangements in which firms that are indirect participants in NSCC rely on the services provided by Members to access NSCC's payment, clearing, or settlement facilities.<sup>22</sup> By expressly reflecting in the Rules what is already NSCC's current practice associated with its request for additional reporting of a Member's financial or operational conditions to state that such request may include information regarding the businesses and operations of the Member, as well as its risk management practices with respect to services of NSCC utilized by the Member for another Person, this proposed rule change would help enable NSCC to have rule provisions that are reasonably designed to identify, monitor and manage the material risks to NSCC arising from tiered participation arrangements consistent with Rule 17Ad-22(e)(19).

#### III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

<sup>21</sup> 17 CFR 240.17Ad-22(e)(19). *Id.*

<sup>22</sup> *Id.*

<sup>17</sup> 12 U.S.C. 5464(b).

<sup>18</sup> *Id.*

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2017-801 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NSCC-2017-801. 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 NSCC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2017-801 and should be submitted on or before April 28, 2017.

By the Commission.  
**Eduardo A. Aleman**,  
*Assistant Secretary*.  
 [FR Doc. 2017-07453 Filed 4-12-17; 8:45 am]  
**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80401; File No. SR-PEARL-2017-17]

#### Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

April 7, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 6, 2017, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

##### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the "Fee Schedule") to waive transaction rebates/fees applicable to transactions executed during the opening and transactions that cross the Away Best Bid or Offer ("ABBO").

The Exchange initially filed the proposal on March 29, 2017 (SR-PEARL-2017-13). That filing has been withdrawn and replaced with the current filing (SR-PEARL-2017-17).

The text of the proposed rule change is available on the Exchange's Web site at <http://www.miaxoptions.com/rule-filings/pearl>, at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

##### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposed rule change is to waive transaction rebates/fees applicable to executions that occur as part of the Exchange's opening procedures as described in Rule 503 ("Openings on the Exchange") or that uncross the ABBO,<sup>3</sup> as described in Rule 515 ("Execution of Orders").

Under the Openings on the Exchange Rule, the Exchange will accept orders for queuing in a series of options prior to the opening of trading in that series of options. As such and as further described in Rule 503, executions might occur in a series as part of the Exchange Opening as the series is being opened for trading. Pursuant to Section 1)a) of the Exchange's Fee Schedule, the Exchange currently assesses transaction rebates and fees for transactions that occur as part of the Exchange Opening. In order to determine the applicable transaction rebate and fee, the Exchange treats orders from Priority Customer<sup>4</sup> origin type as a "Maker," and treats orders from all origin types other than Priority Customer (i.e., MIAX PEARL Market Maker<sup>5</sup> and Non-Priority Customer, Firm, BD and Non-MIAX PEARL Market Maker)<sup>6</sup> as a "Taker." The Exchange now proposes that, for executions occurring as part of the Exchange Opening, the Exchange will neither charge a fee nor provide a rebate, regardless of origin type.

Further, pursuant to Section 1)a) of the Exchange's Fee Schedule, the Exchange currently assesses transaction rebates and fees for transactions that uncross the ABBO. In order to

<sup>3</sup> See MIAX PEARL Rule 100.

<sup>4</sup> The term "Priority Customer" is defined in Exchange Rule 100 to mean a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders is counted in accordance with Rule 100 Interpretation and Policy .01.

<sup>5</sup> The term "Market Maker" is defined in Exchange Rule 100 to mean a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange's Rules.

<sup>6</sup> See MIAX PEARL Fee Schedule, Section 1(a).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

determine the applicable transaction rebate and fee, the Exchange treats orders from Priority Customer origin type as a “Maker,” and treats orders from all origin types other than Priority Customer as a “Taker.” The Exchange now proposes that, for executions occurring in such scenario, the Exchange will neither charge a fee nor provide a rebate, regardless of origin type.

The Exchange has determined to make these changes for competitive reasons in order to attract more order flow to the Exchange in these scenarios. The Exchange notes that other exchanges do not assess transaction rebates/fees in these scenarios, including Bats BZX Exchange.<sup>7</sup> The Exchange notes that any contracts executed as a result of such transactions will continue to be counted for purposes of determining the volume criteria and TCV<sup>8</sup> for purposes of calculating tiered rebates and fees.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposal provides that executions that occur as part of the Exchange Opening will not incur any fees or receive any rebates, regardless of origin type. The Exchange believes that its proposal to waive transaction rebates/fees that occur as part of the Exchange

Opening is reasonable, fair and equitable because it will incentivize Members<sup>11</sup> to send greater order flow to the Exchange in this scenario, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that the foregoing is fair and equitable because it provides certainty for Members with respect to execution costs across all trades occurring as part of the Exchange Opening. Lastly, the Exchange also believes that the proposed pricing for executions occurring as part of the Opening on the Exchange is nondiscriminatory because it will apply equally to all Members, regardless of origin type.

The proposal further provides that executions that uncross the ABBO will not be assessed any fees or receive any rebates, regardless of origin type. The Exchange believes that its proposal to waive transaction rebates/fees that uncross the ABBO is reasonable, fair and equitable because it will incentivize Members to send greater order flow to the Exchange in this scenario, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that the foregoing is fair and equitable because it provides certainty for Members with respect to execution costs across all trades which uncross the ABBO. Lastly, the Exchange also believes that the proposed pricing for executions occurring in this scenario is nondiscriminatory because it will apply equally to all Members, regardless of origin type.

### B. Self-Regulatory Organization's Statement on Burden on Competition

MIAx PEARL 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. To the contrary, the Exchange notes that this rule change is being proposed as a competitive offering at a time when other options exchanges are offering similar processes for opening their respective markets or managed interest processes. As a result of the competitive environment, Members will have various pricing and execution models to choose from in making determinations on where to enter orders prior to the opening of trading or which may potentially uncross the ABBO. The Exchange notes that it operates in a

highly competitive market in which Members can readily direct order flow to competing venues if they deem fee levels to be excessive.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2017-17 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-PEARL-2017-17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

<sup>7</sup> See Securities Exchange Act Release No. 71746 (March 19, 2014), 79 FR 16412 (March 25, 2014) (SR-BATS-2014-006).

<sup>8</sup> TCV means total consolidated volume calculated as the total national volume in those classes listed on MIAx PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours (solely in the option classes of the affected Matching Engine). See Fee Schedule Definitions.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See MIAx PEARL Rule 100.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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-PEARL-2017-17, and should be submitted on or before May 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-07458 Filed 4-12-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80400; File No. SR-BOX-2017-11]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program for the Listing and Trading of Options Settling to the RealVol™ SPY Index ("Index")

April 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 4, 2017, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for the listing and trading of options settling to the RealVol™ SPY Index ("Index"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to extend the pilot period for the listing and trading of options settling to the RealVol™ SPY Index ("Index"), which is currently scheduled to expire on May 6, 2017.<sup>3</sup> The Exchange is proposing to extend the pilot period for an additional twelve (12) month period, until May 6, 2018. This filing does not propose any substantive changes to the listing and trading of options settling to the RealVol™ SPY ("the RealVol™ SPY Pilot Program" or "Pilot Program").

In the initial proposal to list and trade this product, the Exchange stated that if it were to propose an extension, permanent approval or termination of the Pilot Program, the Exchange would submit a filing proposing such amendments to the program.<sup>4</sup> Accordingly, the Exchange is submitting this filing to extend the program, as the

<sup>3</sup> See Securities Exchange Act Release No. 77660 (April 20, 2016), 81 FR 24676 (April 26, 2016) (Notice of Filing and Immediate Effectiveness SR-BOX-2016-19).

<sup>4</sup> See Securities Exchange Act Release No. 74876 (May 5, 2015), 80 FR 26966 (May 11, 2015) (Order Approving SR-BOX-2015-06).

Exchange has not yet begun to list or trade options settling to the RealVol™ SPY Index, but plans to do so in the future.

As proposed in the initial filing, the Exchange proposes to submit a Pilot Program Report to the Securities and Exchange Commission (the "Commission") two months prior to the expiration date of the Pilot Program (the "annual report").<sup>5</sup> 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 SPY. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and SPY 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 is in effect. These interim reports would also be provided on a confidential basis.

In addition, the annual report would contain the following analysis of trading patterns in VOLS series in the pilot:

- (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 SPY trading volume at the close on expiration Fridays:

<sup>5</sup> *Id.* The Exchange did not submit an annual report because the Index was never listed for trading.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

(1) 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 the Chicago Board Options Exchange, Incorporated (“CBOE”) Volatility Index (VIX), would be provided; and

(2) a calculation of trading volume for a sample set of SPY representing an upper limit on trading that could be attributable to expiring in-the-money series. The data would include a comparison of the calculated volume for SPY in the sample set to the average daily trading volumes of SPY over a sample period.

The minimum open interest parameters, control sample, time intervals, and sample periods would be determined by the Exchange and the Commission.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed extension will further the Exchange’s goal of introducing new and innovative products to the marketplace. The Exchange believes that listing the RealVol™ SPY Index will provide an opportunity for investors to hedge, or speculate on, the market risk associated with changes in realized volatility.

The Exchange believes that extending the RealVol™ SPY Index Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, the potential to establish greater positions when pursuing their investment goals and needs.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not

necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed extension will allow for the listing and trading of a novel index option product 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*

The Exchange has neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange believes the proposed change is “non-controversial” because it will allow for the listing and trading of a previously approved novel index option product that will enhance competition among market participants, to the benefit of investors and the marketplace.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>8</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

### *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](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2017-11 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2017-11. 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 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-BOX-2017-11, and should be submitted on or before May 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-07457 Filed 4-12-17; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

**DEPARTMENT OF STATE**

[Public Notice: 9960]

**Bureau of International Organization Affairs; The U.S. National Commission for UNESCO; Notice of Renewal of Committee Charter**

I. Renewal of Advisory Committee. The Department of State has renewed the Charter of the U.S. National Commission for the United Nations Educational, Scientific, and Cultural Organization (UNESCO). The U.S. National Commission for UNESCO, which operates pursuant to 22 U.S. Code 287*o* and the requirements of the Federal Advisory Committee Act (FACA), is a Federal Advisory Committee that provides recommendations to the U.S. Department of State.

The recommendations relate to the formulation and implementation of U.S. policy towards UNESCO on matters of education, science, communications, and culture. Also, the Commission functions as a liaison with organizations, institutions, and individuals in the United States interested in the work of UNESCO.

The Commission is comprised of representatives of American organizations and institutions having an interest in education, science, communications and culture, including professional associations, educational institutions, and non-governmental

organizations (NGOs), as well as representatives of federal, state and local governments, and at-large individuals. The Commission meets to provide information on UNESCO related topics and make recommendations.

For further information, please call Paul Mungai, U.S. Department of State, (202) 663-2407.

**Paul Mungai,**

*Acting Executive Director, U.S. National Commission for UNESCO, Department of State.*

[FR Doc. 2017-07481 Filed 4-12-17; 8:45 am]

**BILLING CODE 4710-19-P****DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-0521]

**Compliance Inspection Report**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on Wednesday, April 5, 2017 that contained an error. The 60-day Public Comment notice identified of the wrong title for the Agency Information Collection Activity. This document corrects the notice by replacing the title in error: "Compliance Report" with the

correct title: "Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans."

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at 202-461-5870.

**Correction**

In FR Doc. 2017-06687, published on Wednesday, April 5, 2017 at 82FR64, make the following corrections. On page 16664, in the heading "Agency Information Collection Activity: Compliance Inspection Report, and also under **SUPPLEMENTARY INFORMATION: Title:** Compliance Inspection Report, please correct and replace the titles with, "Agency Information Collection Activity: Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans" and under "**SUPPLEMENTARY INFORMATION: Title:** Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans."

By direction of the Secretary.

Dated: April 10, 2017.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Enterprise Records Service, Office of Quality and Compliance, Department of Veterans Affairs.*

[FR Doc. 2017-07480 Filed 4-12-17; 8:45 am]

**BILLING CODE 8320-01-P**

# Reader Aids

Federal Register

Vol. 82, No. 70

Thursday, April 13, 2017

## CUSTOMER SERVICE AND INFORMATION

<b>Federal Register/Code of Federal Regulations</b>	
General Information, indexes and other finding aids	<b>202-741-6000</b>
<b>Laws</b>	<b>741-6000</b>
<b>Presidential Documents</b>	
Executive orders and proclamations	<b>741-6000</b>
<b>The United States Government Manual</b>	<b>741-6000</b>
<b>Other Services</b>	
Electronic and on-line services (voice)	<b>741-6020</b>
Privacy Act Compilation	<b>741-6050</b>
Public Laws Update Service (numbers, dates, etc.)	<b>741-6043</b>

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: [www.fdsys.gov](http://www.fdsys.gov).

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: [www.ofr.gov](http://www.ofr.gov).

### E-mail

**FEDREGTOC** (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

## FEDERAL REGISTER PAGES AND DATE, APRIL

16101-16286.....	3
16287-16508.....	4
16509-16724.....	5
16725-16890.....	6
16891-17096.....	7
17097-17378.....	10
17379-17530.....	11
17531-17744.....	12
17745-17932.....	13

## CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<b>3 CFR</b>	25 .....	16891, 16893, 17101, 17531
<b>Proclamations:</b>	39 .....	16101, 16725, 16728, 16895, 16897, 17103, 17107, 17112, 17533, 17537, 17540, 17542, 17749
9581 .....	16707	
9582 .....	16709	
9583 .....	16711	
9584 .....	16713	
9585 .....	16715	
9586 .....	16717	
9587 .....	16889	
9588 .....	17377	
9589 .....	17529	
9590 .....	17745	
9591 .....	17747	
<b>Executive Orders:</b>	71 .....	16140, 16952, 16953, 16955, 16957, 16958, 16960, 16962, 17158, 17160, 17776, 17778
13775 (Revoked by EO 13787).....	16723	
13784.....	16279	
13785.....	16719	
13786.....	16721	
13787.....	16723	
<b>Administrative Orders:</b>	<b>15 CFR</b>	744.....16730
<b>Memorandums:</b>	902.....16478	
<b>Memorandum of January 28, 2017 (Revoked by Memorandum of April 4, 2017) .....</b>	<b>16 CFR</b>	<b>Proposed Rules:</b>
<b>16881</b>	1112.....16963	1130.....16963
<b>Memorandum of March 6, 2017 .....</b>	1236.....16963	
<b>16283</b>	<b>17 CFR</b>	210.....17545
<b>Memorandum of April 4, 2017 .....</b>	227.....17545	229.....17545
<b>16881</b>	230.....17545	239.....17545
<b>Memorandum of March 19, 2017 .....</b>	240.....17545	249.....17545
<b>17375</b>	<b>20 CFR</b>	401.....16509
<b>Notices:</b>	<b>21 CFR</b>	1.....16733
<b>Notice of April 6, 2017 .....</b>	1308.....17119	<b>Proposed Rules:</b>
<b>17095</b>	73.....16321	<b>22 CFR</b>
<b>5 CFR</b>	<b>Proposed Rules:</b>	96.....16322
<b>Proposed Rules:</b>	1631.....16744	<b>29 CFR</b>
<b>7 CFR</b>	<b>21 CFR</b>	2510.....16902
1436.....16101	1.....16733	<b>30 CFR</b>
<b>9 CFR</b>	1308.....17119	<b>Proposed Rules:</b>
201.....17531	<b>Proposed Rules:</b>	901.....16975
<b>Proposed Rules:</b>	73.....16321	1202.....16323, 16325
201.....17594	<b>22 CFR</b>	1206.....16323, 16325
<b>10 CFR</b>	96.....16322	<b>33 CFR</b>
72.....17749	<b>29 CFR</b>	100.....16105, 17557, 17751
<b>proposed Rules:</b>	2510.....16902	
50.....17768	<b>30 CFR</b>	
52.....17768	<b>Proposed Rules:</b>	
<b>12 CFR</b>	901.....16975	
<b>Proposed Rules:</b>	1202.....16323, 16325	
1002.....16307	1206.....16323, 16325	
<b>14 CFR</b>	<b>33 CFR</b>	
13.....17097	100.....16105, 17557, 17751	

117 .....16105, 16106, 16735,  
16918, 17124, 17560, 17561  
165 .....16107, 16109, 16111,  
16112, 16114, 16510, 17124,  
17754  
167 .....16510  
183 .....16512  
**Proposed Rules:**  
100 .....16746, 17780, 17782  
165 .....16142, 16327, 16746,  
16976, 17782

**38 CFR**  
17 .....16287  
**Proposed Rules:**  
36 .....17792

**40 CFR**  
52 .....16919, 16920, 16921,  
16924, 16927, 16931, 16932,  
16934, 16938, 16940, 16943,  
17124, 17128, 17131, 17134,  
17136, 17144, 17380  
63 .....16736  
81 .....16740, 16938, 16940,  
16943  
180 .....17146, 17563  
300 .....17151  
**Proposed Rules:**  
Ch. I .....17601, 17793  
52 .....16770, 16772, 16980,  
16981, 17161, 17166, 17174,  
17175, 17405  
60 .....16144, 16329, 16330,  
16331  
68 .....16146  
80 .....17597

141 .....17406  
143 .....17406  
174 .....17175  
180 .....17175  
Ch. IV .....17793  
Ch. V .....17793  
Ch. VI .....17793  
Ch. VII .....17793

**42 CFR**  
73 .....17569  
447 .....16114  
495 .....16741  
**Proposed Rules:**  
409 .....16150  
410 .....16150  
418 .....16150  
440 .....16150  
484 .....16150  
485 .....16150  
488 .....16150

**44 CFR**  
64 .....16122

**45 CFR**  
500 .....16124  
510 .....16124

**46 CFR**  
530 .....16288  
531 .....16288  
**Proposed Rules:**  
401 .....16542  
403 .....16542  
404 .....16542

**47 CFR**  
1 .....16297  
22 .....17570  
54 .....16127, 16297  
64 .....17754  
**Proposed Rules:**  
2 .....16777  
25 .....16777  
36 .....16152  
64 .....17613  
73 .....17406

**48 CFR**  
**Proposed Rules:**  
816 .....16332  
828 .....16332  
852 .....16332

**49 CFR**  
192 .....17152  
209 .....16127, 17765  
213 .....16127, 17765  
214 .....16127, 17765  
215 .....16127, 17765  
216 .....16127, 17765  
217 .....16127, 17765  
218 .....16127, 17765  
219 .....16127, 17765  
220 .....16127, 17765  
221 .....16127, 17765  
222 .....16127, 17765  
223 .....16127, 17765  
224 .....16127, 17765  
225 .....16127, 17765  
227 .....16127, 17765  
228 .....16127, 17765  
229 .....16127, 17765

230 .....16127, 17765  
231 .....16127, 17765  
232 .....16127, 17765  
233 .....16127, 17765  
234 .....16127, 17765  
235 .....16127, 17765  
236 .....16127, 17765  
237 .....16127, 17765  
238 .....16127, 17765  
239 .....16127, 17765  
240 .....16127, 17765  
241 .....16127, 17765  
242 .....16127, 17765  
243 .....16127, 17765  
244 .....16127, 17765  
270 .....16127, 17765  
272 .....16127, 17765  
386 .....17584  
**Proposed Rules:**  
1104 .....16550  
1109 .....16550  
1111 .....16550  
1114 .....16550  
1130 .....16550

**50 CFR**  
15 .....16522  
17 .....16522, 16668  
92 .....16298  
300 .....17382  
622 .....17387  
635 .....16136, 16478, 17765  
679 .....16306, 16540, 16742,  
16946, 16947  
**Proposed Rules:**  
17 .....16559, 16981

---

---

**LIST OF PUBLIC LAWS**

---

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List April 7, 2017

---

---

**Public Laws Electronic Notification Service (PENS)**

---

**PENS** is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.