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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–NOP–15–0012; NOP–15–06]

RIN 0581–AD44

National Organic Program (NOP); Organic Livestock and Poultry Practices

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: The United States Department of Agriculture's Agricultural Marketing Service (AMS) is delaying the effective date of the rule published on January 19, 2017, for an additional six months to November 14, 2017, to allow time for further consideration by USDA. The effective date for this rule was initially March 20, 2017, and was subsequently delayed to May 19, 2017, by a document published in the **Federal Register** on February 9, 2017. The final rule amends the organic livestock and poultry production requirements by adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expands and clarifies existing requirements covering livestock care and production practices and mammalian living conditions.

DATES: The effective date of the final rule published on January 19, 2017 (82 FR 7042), delayed until May 19, 2017, on February 9, 2017 (82 FR 9967), is further delayed until November 14, 2017.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director, Standards Division. Telephone: (202) 720–3252; Fax: (202) 260–9151.

SUPPLEMENTARY INFORMATION: Consistent with the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff, entitled, ''Regulatory Freeze Pending Review,'' on February 9, 2017, AMS delayed the effective date of the final rule, Organic Livestock and Poultry Practices, that was published in the **Federal Register** on January 19, 2017 (82 FR 7042) to May 19, 2017.

Because there are significant policy and legal issues addressed within the final rule that warrant further review by USDA, AMS is further delaying the effective date of this rule by 180 days to November 14, 2017. In addition, AMS will publish a proposed rule that solicits public comments on the direction that USDA should take with respect to the rule. The public will have a 30-day comment period to specify whether USDA should: (1) Let the rule become effective, (2) suspend the rule indefinitely, (3) delay the effective date of the rule further, or (4) withdraw the rule.

The rule amends the organic livestock and poultry production requirements of the USDA organic regulations by adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expands and clarifies existing requirements covering livestock care and production practices and mammalian living conditions. The rule finalizes a proposed rule that AMS published in the **Federal Register** on April 13, 2016, 81 FR 21955.

To the extent that 5 U.S.C. 553(b)(A) applies to this action, it is exempt from notice and comment for good cause and the reasons cited above. AMS finds that notice and solicitation of comment regarding the brief extension of the effective date for the final regulation are impracticable, unnecessary, or contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). The delay of the effective date until November 14, 2017, should give AMS sufficient time to receive and consider public comments and take action on the disposition of the rule. AMS also believes that affected entities need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation process accordingly.

Dated: May 4, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–09409 Filed 5–9–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3434

RIN 0524–AA39

Hispanic-Serving Agricultural Colleges and Universities

AGENCY: National Institute of Food and Agriculture (NIFA), USDA.

ACTION: Final rule.

SUMMARY: This rule updates the list of institutions that are granted Hispanic-Serving Agricultural Colleges and Universities (HSACU) certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2016, and ending September 30, 2017.

DATES: This rule is effective May 10, 2017 and applicable beginning October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Lisa Read; Policy Analyst; National Institute of Food and Agriculture; U.S. Department of Agriculture, STOP 2272, 1400 Independence Avenue SW., Washington, DC 20250–2272; Voice: 202–731–1366; Fax: 202–401–7752; Email: *ldepaolo@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

HSACU Institutions for Fiscal Year 2017

This rule makes changes to the existing list of institutions in Appendix B of 7 CFR part 3434. The list of institutions is amended to reflect the institutions that are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2016, and ending September 30, 2017.

Certification Process

As stated in 7 CFR 3434.4, an institution must meet the following criteria to receive HSACU certification: (1) Be a Hispanic-Serving Institution (HSI), (2) offer agriculture-related degrees, (3) not appear on the Excluded Parties List System (EPLS), (4) be accredited, and (5) award at least 15% of agriculture-related degrees to Hispanic students over the two most recent academic years.

NIFA obtained the latest report from the U.S. Department of Education's

National Center for Education Statistics that lists all HSIs and the degrees conferred by these institutions (completion data) during the 2014–15 academic year. NIFA used this report to identify HSIs that conferred a degree in an instructional program that appears in Appendix A of 7 CFR part 3434 and to confirm that over the 2013–14 and 2014–15 academic years at least 15% of the degrees in agriculture-related fields were awarded to Hispanic students. NIFA further confirmed that these institutions were nationally accredited and were not on the exclusions listing in the System for Award Management (*https://www.sam.gov/portal/SAM/##11*).

The updated list of HSACUs is based on (1) completions data from 2013–14 and 2014–15, and (2) enrollment data from Fall 2015. NIFA identified 104 institutions that met the eligibility criteria to receive HSACU certification for FY 2017 (October 1, 2016 to September 30, 2017).

Declaration of Intent To Apply for NLGCA Designation

As set forth in Section 7101 of the Agricultural Act of 2014 (Pub. L. 113–79), which amends 7 U.S.C. 3103, an institution that is eligible to be designated as an HSACU may notify the Secretary of its intent not to be considered an HSACU. To opt out of designation as an HSACU, an authorized official at the institution must submit a declaration of intent not to be considered an HSACU to NIFA by email at *NLGCA.status@nifa.usda.gov.* In accordance with Section 7101, a declaration by an institution not to be considered an HSACU shall remain in effect until September 30, 2018. Institutions that opt out of HSACU designation will have the option to apply for designation as a Non-Land Grant College of Agriculture (NLGCA) institution. To be eligible for NLGCA designation, institutions must be public colleges or universities offering baccalaureate or higher degrees in the study of food and agricultural sciences, as defined in 7 U.S.C. 3103. An online form to request NLGCA designation is available at *http://nifa.usda.gov/webform/request-non-land-grant-college-agriculture-designation.*

In FYs 2015, 2016 and 2017 five institutions opted out of their HSACU designation and received NLGCA designation, hence they are excluded from the FY 2017 HSACU list.

Appeal Process

As set forth in 7 CFR 3434.8, NIFA will permit HSIs that are not granted HSACU certification to submit an appeal within 30 days of the publication of this notice.

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** This rule also is exempt from the provisions of Executive Order 12866. This action is not a rule as defined by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.,* or the Congressional Review Act, 5 U.S.C. 801 *et seq.,* and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 3434

Administrative practice and procedure; Agricultural research, Education, Extension; Hispanic-Serving Institutions; Federal assistance.

Accordingly, part 3434 of Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 3434—HISPANIC-SERVING AGRICULTURAL COLLEGES AND UNIVERSITIES CERTIFICATION PROCESS

■ 1. The authority citation for part 3434 continues to read as follows:

Authority: 7 U.S.C. 3103.

■ 2. Revise appendix B to part 3434 to read as follows:

Appendix B to Part 3434—List of HSACU Institutions, 2016–2017

The institutions listed in this appendix are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2016, and ending September 30, 2017. Institutions are listed alphabetically under the state of the school's location, with the campus indicated where applicable.

Arizona (5)

Arizona Western College
Central Arizona College
Cochise County Community College
Phoenix College
Pima Community College

California (40)

Allan Hancock College
Antioch University—Los Angeles
Bakersfield College
California Baptist University
California Lutheran University
Chaffey College
College of the Desert
College of the Sequoias
Cuyamaca College
El Camino Community College District
Fullerton College
Golden West College
Hartnell College
Imperial Valley College
Long Beach City College
Los Angeles Pierce College
Merced College
MiraCosta College
Modesto Junior College
Mt San Antonio College
Mt San Jacinto Community College District
National University
Orange Coast College
Pacific Union College
Porterville College
Reedley College
Santa Ana College
San Bernardino Valley College
San Diego City College
San Diego Mesa College
San Diego State University
San Francisco State University
San Jose State University
Saint Mary's College of California
Southwestern College
University of La Verne
Victor Valley College
West Hills College—Coalinga
Whittier College
Woodland Community College

Colorado (2)

Community College of Denver
Trinidad State Junior College

Florida (3)

Broward College
Florida International University
Miami Dade College

Illinois (1)

Dominican University

Kansas (2)

Dodge City Community College
Seward County Community College and Area Technical School

Massachusetts (1)

Springfield Technical Community College

Nevada (1)

Truckee Meadows Community College

New Jersey (3)

Essex County College
Montclair State University
Saint Peter's University

New Mexico (10)

Central New Mexico Community College
Eastern New Mexico University—Main Campus
Eastern New Mexico University—Ruidoso Campus
Mesalands Community College
New Mexico Highlands University
New Mexico Institute of Mining and Technology
Northern New Mexico College
Santa Fe Community College
Western New Mexico University
University of New Mexico—Los Alamos Campus

New York (4)

CUNY City College
CUNY LaGuardia Community College
Mercy College
SUNY Westchester Community College

Oregon (1)

Chemeketa Community College

Puerto Rico (10)

Instituto Tecnologico de Puerto Rico—Recinto de Manati
Inter American University of Puerto Rico—Aguadilla
Inter American University of Puerto Rico—Bayamon
Inter American University of Puerto Rico—Metro
Inter American University of Puerto Rico—San German
Inter American University of Puerto Rico—Ponce
Pontifical Catholic University of Puerto Rico—Ponce
Universidad Del Este
Universidad Del Turabo
Universidad Metropolitana

Texas (18)

Houston Community College
Palo Alto College
Saint Edwards's University
San Antonio College
Southwest Texas Junior College
St. Mary's University
Texas State Technical College
Texas State University
The University of Texas—Pan American
The University of Texas at Brownsville
The University of Texas at El Paso
The University of Texas Rio Grande Valley
The University of Texas at San Antonio
University of Houston
University of Houston—Clear Lake
University of the Incarnate Word
University of St. Thomas
Western Texas College

Washington (3)

Heritage University
Wenatchee Valley College
Yakima Valley Community College

Done in Washington, DC, this 1st day of May 2017.

Sonny Ramaswamy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2017–09415 Filed 5–9–17; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0319; Special Conditions No. 25–668–SC]

Special Conditions: Embraer S.A., Model ERJ 190–300 Series Airplanes; Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. (Embraer) Model ERJ 190–300 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are electrical and electronic systems that perform critical functions, the loss of which could be catastrophic to the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Embraer S.A. on May 10, 2017. We must receive your comments by June 26, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0319 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2315; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplanes.

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

Comments Invited

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

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

Background

On September 13, 2013, Embraer applied for an amendment to type certificate (TC) no. A57NM to include

the new Model ERJ 190–300 airplane. This airplane, which is a derivative of the ERJ 190–100 STD currently approved under TC no. A57NM, is a 94- to 114-passenger transport category airplane with two Pratt & Whitney Model PW1900G engines and a new wing design with a high aspect ratio and raked wingtip.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Embraer must show that the Model ERJ 190–300 airplane meets the applicable provisions of the regulations listed in type certificate no. A57NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. Embraer must show that the Model ERJ 190–300 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–137.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model ERJ 190–300 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Model ERJ 190–300 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Model ERJ 190–300 airplane will incorporate the following novel or unusual design features: Electrical and electronic systems that perform critical functions, the loss of which may result in loss of flight controls and other critical systems and may be catastrophic to the airplane.

Discussion

The Model ERJ 190–300 airplane has a fly-by-wire flight control system that requires a continuous source of electrical power in order to maintain an operable flight control system. Section 25.1351(d), *Operation without normal electrical power,* requires safe operation in visual flight rule (VFR) conditions for at least five minutes after loss of normal electrical power excluding the battery. This rule was structured around a traditional design using mechanical control cables and linkages for flight control. These manual controls allowed the crew to maintain aerodynamic control of the airplane for an indefinite period of time after loss of all electrical power. Under these conditions, a mechanical flight control system provided the crew with the ability to fly the airplane while attempting to identify the cause of the electrical failure, restart engine(s) if necessary, and attempt to re-establish some of the electrical power generation capability.

A critical assumption in § 25.1351(d) is that the airplane is in VFR conditions at the time of the failure. This is not a valid assumption in today's airline operating environment where airplanes fly much of the time in instrument meteorological conditions on air traffic control defined flight paths. Another assumption in the existing rule is that the loss of all normal electrical power is the result of the loss of all engines. The five-minute period in the rule is to allow at least one engine to be restarted following an all-engine power loss in order to continue the flight to a safe landing. However, service experience on airplane models with similar electrical power system architecture as the airplane has shown that at least the temporary loss of all electrical power for causes other than all-engine failure is not extremely improbable.

To maintain the same level of safety envisioned by the existing rule with traditional mechanical flight controls, the Model ERJ 190–300 airplane design must not be time-limited in its operation under all reasonably foreseeable conditions, including loss of all normal sources of engine or auxiliary power unit (APU)-generated electrical power. Unless Embraer can show that the non-restorable loss of the engine and APU power sources is extremely improbable, Embraer must demonstrate that the airplanes can maintain safe flight and landing (including steering and braking on the ground for airplanes using steer/brake-by-wire and/or fly-by-wire speed brake panels) with the use of its emergency/alternate electrical power systems. These electrical power systems, or the minimum restorable electrical power sources, must be able to power loads that are essential for continued safe flight and landing, including those required for the maximum length of approved flight diversion.

Applicability

As discussed above, these special conditions are applicable to the Model ERJ 190–300 airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

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

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer Model ERJ 190–300 airplanes.

In lieu of 14 CFR 25.1351(d) the following special conditions apply:

1. The applicant must show by test or a combination of test and analysis that the airplane is capable of continued safe flight and landing with all normal

electrical power sources inoperative, as prescribed by paragraphs 1.a. and 1.b., below. For purposes of these special conditions, normal sources of electrical power generation do not include any alternate power sources such as the battery, ram air turbine, or independent power systems such as the flight control permanent magnet generating system. In showing capability for continued safe flight and landing, the applicant must account for systems capability, effects on crew workload and operating conditions, and the physiological needs of the flightcrew and passengers for the longest diversion time for which the applicant is seeking approval.

a. In showing compliance with this requirement, the applicant must account for common-cause failures, cascading failures, and zonal physical threats.

b. The applicant may consider the ability to restore operation of portions of the electrical power generation and distribution system if it can be shown that unrecoverable loss of those portions of the system is extremely improbable. The design must provide an alternative source of electrical power for the time required to restore the minimum electrical power generation capability required for safe flight and landing. The applicant may exclude unrecoverable loss of all engines when showing compliance with this requirement.

2. Regardless of any electrical generation and distribution system recovery capability shown under paragraph 1 of these special conditions, sufficient electrical system capability must be provided to:

a. Allow time to descend, with all engines inoperative, at the speed that provides the best glide distance, from the maximum operating altitude to the top of the engine restart envelope, and

b. Subsequently allow multiple start attempts of the engines and auxiliary power unit (APU). The design must provide this capability in addition to the electrical capability required by existing part 25 requirements related to operation with all engines inoperative.

3. The airplane emergency electrical power system must be designed to supply:

a. Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power, for a duration sufficient to allow reconfiguration to provide a non-time-limited source of electrical power.

b. Electrical power required for continued safe flight and landing for the maximum diversion time.

4. If the applicant uses APU-generated electrical power to satisfy the requirements of these special conditions, and if reaching a suitable runway for landing is beyond the capacity of the battery systems, then the APU must be able to be started under any foreseeable flight condition prior to the depletion of the battery or the restoration of normal electrical power, whichever occurs first. Flight test must demonstrate this capability at the most critical condition.

a. The applicant must show that the APU will provide adequate electrical power for continued safe flight and landing.

b. The operating limitations section of the airplane flight manual (AFM) must incorporate non-normal procedures that direct the pilot to take appropriate actions to activate the APU after loss of normal engine-driven generated electrical power.

5. As part of showing compliance with these special conditions, the tests to demonstrate loss of all normal electrical power must also take into account the following:

a. The assumption that the failure condition occurs during night instrument meteorological conditions (IMC) at the most critical phase of the flight, relative to the worst possible electrical power distribution and equipment-loads-demand condition.

b. After the un-restorable loss of normal engine generator power, the airplane engine restart capability is provided and operations continued in IMC.

c. The airplane is demonstrated to be capable of continued safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. The applicant must account for airspeed reductions resulting from the associated failure or failures.

d. The airplane must provide adequate indication of loss of normal electrical power to direct the pilot to the non-normal procedures, and the operating limitations section of the AFM must incorporate non-normal procedures that will direct the pilot to take appropriate actions.

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

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09441 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0215; Special Conditions No. 25–669–SC]

Special Conditions: Textron Aviation Inc. Model 700 Airplane; Design Roll Maneuver Condition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Textron Aviation Inc. (Textron) Model 700 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an electronic flight-control system that provides control through pilot inputs to the flight computer. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Textron on May 10, 2017. We must receive your comments by June 26, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0215 using any of the following methods:

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

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search

function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478)

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

FOR FURTHER INFORMATION CONTACT: Greg Schneider, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2116; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds it unnecessary to delay the effective date and finds tthat good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

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

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

Background

On November 20, 2014, Textron applied for a type certificate for their new Model 700 airplane. The Model 700 airplane is low-wing, pressurized, turbofan-powered executive jet airplane with seating for two crewmembers and up to 12 passengers. This airplane will have two Honeywell AS907–2–1S turbofan engines and a maximum takeoff weight of 38,514 pounds.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Textron must show that the Model 700 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–139, 25–141, and 25–143.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Textron Model 700 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Model 700 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model 700 airplane will incorporate the following novel or unusual design feature: An electronic flight-control system that provides control through pilot inputs to the flight computer.

Discussion

The roll control system uses both ailerons and flight spoilers. The aileron control system is a fully mechanical system, and the flight spoilers are fly-by-wire. Section 25.349 specifies roll maneuver load conditions that are based on aileron deflection, rather than control-wheel deflection. By specifying the load conditions in terms of aileron deflection, the current requirement does not address electronic flight controls that cause nonlinearities and other loads caused by spoilers. Since this type of system affects flight loads, and therefore the structural capability of the airplane, special conditions are necessary to address these effects.

These special conditions differ from current requirements in that they require the actuation of the cockpit roll control, as opposed to the aileron itself, to perform the roll maneuver. Also, these special conditions require an additional load condition at V_A, in which the cockpit roll control is returned to neutral following the initial roll input.

These special conditions differ from similar special conditions applied to previous similar technologies. These special conditions are limited to the roll axis only, whereas previous special conditions also included the pitch and yaw axes. Special conditions are no longer necessary for the pitch or yaw axes because Amendment 25–91 takes into account the effects of an electronic flight-control system in those axes (§ 25.331 for pitch and § 25.351 for yaw).

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

Applicability

As discussed above, these special conditions are applicable to the Textron Model 700 airplane. Should Textron apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that

may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Textron Aviation Inc. Model 700 airplanes.

In lieu of compliance with § 25.349(a), the following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and of two-thirds of the positive maneuvering factor used in design. In determining the resulting control-surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

1. Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines or other weight concentrations outboard of the fuselage. For the angular-acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

2. At V_A, sudden movement of the cockpit roll control up to the limit is applied. The position of the cockpit roll control must be maintained until a steady roll rate is achieved, and then must be returned suddenly to the neutral position.

3. At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in paragraph 2.

4. At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in paragraph 2.

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

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–09440 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6436; Directorate Identifier 2015–SW–037–AD; Amendment 39–18869; AD 2017–09–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK117 C–2 helicopters. This AD requires inspecting the pilot collective wiring harness and was prompted by a report that the heat-shrinkable sleeve prevented the twist grip on the collective from being fully engaged during a flight test. The actions of this AD are intended to prevent an unsafe condition on these products.

DATES: This AD is effective June 14, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of June 14, 2017.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbushelicopters.com/techpub/FO/scripts/myFO_login.php.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6436.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6436; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On December 7, 2016, at 81 FR 88143, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters MBB–BK 117 C–2 helicopters, serial numbers 9004 through 9708. The NPRM proposed to require visually inspecting the pilot collective wiring harness for proper installation of the heat-shrinkable and transparent sleeves. The proposed requirements were intended to detect an incorrectly installed heat-shrinkable sleeve on the collective lever wiring harness, which if not corrected, could result in chafing of the wiring and subsequent failure of the hoist cable cutter or emergency landing gear flotation systems.

The NPRM was prompted by AD No. 2015–0144, dated July 21, 2015, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model MBB–BK117 C–2 helicopters, up to serial number 9708. EASA advises that, during a flight test, the pilot could not fully engage a twist grip on a Model MBB–BK117 C–2 helicopter. According to EASA, further investigation found a transparent sleeve on the collective lever wiring harness damaged because of incorrect installation of the heat-shrinkable sleeve. This condition, if not detected and corrected, could result in chafing of the harness, leading to the malfunction of the affected systems, EASA advises. EASA consequently requires a one-time inspection of the heat-shrinkable and transparent sleeves installed on the collective lever wiring harness.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

The compliance time in the EASA AD is based on whether the helicopter has an externally mounted hoist or emergency flotation system. This AD requires compliance within 100 hours time-in-service for all applicable helicopters.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin ASB MBB–BK117 C–2–88A–010, Revision 1, dated April 16, 2015 (ASB), which specifies a visual inspection of the heat-shrinkable sleeve for correct position. If the sleeve's position is incorrect, the ASB specifies shortening the sleeve. If there is any damage, the ASB calls for replacing the damaged parts.

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

Costs of Compliance

We estimate that this AD affects 113 helicopters of U.S. Registry and that labor costs average $85 a work hour.

- Inspecting the pilot collective wiring harness for the correct position of the heat-shrinkable sleeve requires 1.5 work hours. No parts are required for a total cost of $128 per helicopter and $14,464 for the U.S. fleet.
- Replacing or repairing the sleeves requires 5.5 work hours, and parts cost $10, for a total cost of $478 per helicopter.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–09–07 Airbus Helicopters Deutschland GmbH: Amendment 39–18869; Docket No. FAA–2016–6436; Directorate Identifier 2015–SW–037–AD.

(a) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK 117 C–2 helicopters, serial numbers 9004 through 9708, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly installed heat-shrinkable sleeve on the collective lever wiring harness. This condition could result in chafing of the wiring and subsequent failure of the hoist cable cutter or emergency landing gear flotation systems.

(c) Effective Date

This AD becomes effective June 14, 2017.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 100 hours time-in-service, remove the pilot collective lever and visually inspect the pilot collective lever wiring harness for proper installation of the heat-shrinkable sleeve and transparent sleeve and for damage in accordance with paragraph 3.B.2.1 and as depicted in Figure 2 of Airbus Helicopters Alert Service Bulletin MBB–BK117 C–2–88A–010, Revision 1, dated April 16, 2015 (ASB).

(1) If the heat-shrinkable sleeve and transparent sleeve are installed as depicted in Figure 2 of the ASB and there is no damage, install the collective lever in accordance with paragraphs 3.B.2.3.a through 3.B.2.3.f of the ASB.

(2) If the heat-shrinkable sleeve or transparent sleeve is installed as depicted in Figure 3, Detail B of the ASB, alter the heat-shrinkable sleeve as depicted in Figure 3, Detail C.

(3) If the transparent sleeve is damaged as depicted in Figure 4, Detail D of the ASB, replace the heat-shrinkable sleeve, transparent sleeve, and identification sleeve. Replace any wire that has a nick, scratch, cut, or is frayed.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0144, dated July 21, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2016–6436.

(h) Subject

Joint Aircraft Service Component (JASC) Code: Wheel/Ski/Float/Emergency Equipment, 3246/2560.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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 the AD specifies otherwise.

(i) Airbus Helicopters Alert Service Bulletin MBB–BK117 C–2–88A–010, Revision 1, dated April 16, 2015.

(ii) Reserved.

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbushelicopters.com/techpub/FO/scripts/myFO_login.php.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on April 27, 2017.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2017–09373 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act; Miscellaneous Rules

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is implementing provisions of the FOIA Improvement Act of 2016 by amending the regulation governing fees the agency may assess to offset the cost of disseminating information and records to the public. The FTC is also making other clarifying changes and updates to the fee regulation.

DATES: These amendments are effective May 10, 2017.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, (202) 326–3355, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In a document previously published in the **Federal Register**, 81 FR 93861 (Dec. 22, 2016), the Federal Trade Commission, as required by the Freedom of Information Act (FOIA), sought comments on proposed revisions to its fee regulation. *See* 5 U.S.C. 552(a)(4)(A)(i). The FTC proposed to change its fee schedule to implement the FOIA Improvement Act of 2016 (the ''2016 FOIA Amendments'') [1] as appropriate and to revise the regulation to account for other fee-related changes.[2]

A. Public Comments

The FTC received two comments in response to the proposed rule changes: one from Hartley Rathaway and one from the Reporters Committee for Freedom of the Press (''Reporters Committee'').[3]

Comment by Hartley Rathaway

The comment from Hartley Rathaway argues that ''it is [not] fair that the government should force the citizenry to bear the costs of seeing the truth. Cut spending on wars, cut subsidies for the oligarchs, and then put that money toward uses like these. Charging us fees for information is unjust.'' The FTC understands this concern and notes that most agency FOIA responses do not impose any costs on the requester. For example, members of the public are entitled to two hours of free search time and 100 free pages, and are not charged for review time.[4] Other requester categories (including Educational, Non-commercial Scientific Institution, or News Media) are not charged for search or review time, and are also entitled to 100 free pages.[5] The FTC also waives fees if the total chargeable fees for a request are under $25.00.[6] Finally, the Commission may produce releasable records without any charge or at a charge reduced below the established fees if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester.[7] Requesters are required to provide support for a fee waiver or reduction request, or a request to be granted status in one of the noncommercial requester categories.

Additionally, the FTC follows FOIA statutory language and Office of Management and Budget (''OMB'') directives to recoup allowable direct costs. The Freedom of Information Reform Act of 1986 (''FOIA Reform Act'') charged the OMB with responsibility for promulgating, pursuant to notice and comment, guidelines containing a uniform schedule of fees for individual agencies to follow when promulgating their FOIA fee regulations. 5 U.S.C. 552(a)(4)(A)(i). On March 27, 1987, the OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines (OMB Fee Guidelines) but also concluded that issuance of a government-wide fee schedule was precluded by language of the FOIA Reform Act requiring ''each agency's fees to be based upon its direct reasonable operating costs of providing FOIA services.'' *See* 52 FR at 10015. The FOIA Reform Act mandated that agencies conform their fee schedules to these guidelines. The guidelines specifically direct that ''[a]gencies should charge fees that recoup the full allowable direct costs they incur . . . and shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA.'' *Id.* at 10018. The FTC enforces this OMB directive to recoup allowable direct costs while also providing for lower cost requester categories and fee reductions or waivers as directed.

Comment by the Reporters Committee for Freedom of the Press

The Reporters Committee supports the FTC's efforts to update its regulations to comply with FOIA but argues that two aspects of the proposed rule are inconsistent with both the text of FOIA and its recent interpretation by the U.S. Court of Appeals for the District

[1] On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016, Public Law 114–185, amending the Freedom of Information Act (FOIA), 5 U.S.C. 552. The new law addresses a range of procedural issues and places additional limitations on assessing search fees (or, for requesters with preferred fee status, duplication fees) if an agency's response time to a requester is delayed.

[2] On December 22, 2016, the FTC also implemented a final rule that incorporated other parts of the 2016 FOIA Amendments. 81 FR 93804. Pursuant to 5 U.S.C. 553, these changes did not require public comment.

[3] *See https://www.ftc.gov/policy/public-comments/initiative-691* for links to each comment.

[4] 16 CFR 4.8(b).

[5] *Id.*

[6] 16 CFR 4.8(b)(4).

[7] 16 CFR 4.8(e).

of Columbia Circuit in *Cause of Action* v. *Federal Trade Commission,* 799 F.3d 1108 (D.C. Cir. 2015).

First, the Reporters Committee claims that § 4.8(b)(2)(iii) of the proposed rule sets forth an incorrect definition of ''representative of the news media.'' Specifically, the Reporters Committee states:

> FOIA defines a ''representative of the news media'' as any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to *an audience.* 5 U.S.C. 552(a)(4)(A) (emphasis added). The Proposed Rule, however, defines a ''representative of the news media'' as any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to *the public.*

The Reporters Committee argues that the proposed rule's departure from the statutory text should be revised to mirror the language of FOIA. The FTC agrees and is incorporating the Reporters Committee's suggested edit to the Final Rule's definition of ''representative of the news media'' as set out in § 4.8(b)(2)(iii).

Additionally, the Reporters Committee also claims that § 4.8(e)(2)(i)(C) of the proposed rule places impermissible limitations on the conditions pursuant to which a public interest fee waiver will be granted. Section 4.8(e)(2)(i)(C) of the proposed rule stated as follows:

> The understanding to which disclosure is likely to contribute is public understanding, as opposed to the understanding of the individual requester or a narrow segment of interested persons (*e.g.,* by providing specific information about the requester's expertise in the subject area of the request and about the ability and intention to disseminate the information to the public) . . .

The Reporters Committee claims that this portion of the FTC's proposed rule does not comply with the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit in *Cause of Action* v. *Federal Trade Commission,* 799 F.3d 1108 (D.C. Cir. 2015). For public interest fee waivers, the court determined that the FOIA statute does not:

> require a requester to show an ability to convey the information to a ''broad segment'' of the public or to a ''wide audience.'' To the contrary, we have held that ''proof of the ability to disseminate the released information to a broad cross-section of the public is not required.'' . . . FOIA does not require that a requester be able to reach a ''wide audience.'' Rather, as the Second Circuit has held, ''the relevant inquiry . . . is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.''

Cause of Action, 799 F.3d at 1116 (emphasis added) (citations omitted). The Reporters Committee argues that *Cause of Action* shows that for public interest fee waivers it is entirely sufficient if the requested records will increase the understanding of an audience of persons interested in the subject, even if that group is ''narrow'' as compared to the public at large. *See* Comment by the Reporters Committee (citing *Cause of Action,* 799 F.3d at 1116). The Reporters Committee thus claims that the reference to ''a narrow segment of interested persons'' as not meeting the standard for ''public understanding'' for fee waiver determinations should be deleted.

The FTC has considered this suggested edit but is denying the request. The final rule section relating to § 4.8(e)(2)(i)(C) is the same language that was previously proposed. This language complies with the FOIA statute and case law. Both the *Cause of Action* case that the Reporters Committee cites and the subsequent decision in *National Security Counselors* v. *Department of Justice,* 848 F.3d 467, 472 (D.C. Cir. Feb. 14, 2017), stated that, ''although a fee-waiver applicant need not demonstrate its ability to reach a 'wide audience,' it must at least show that it can 'disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.' ''

The *National Security Counselors* case then concluded that where a FOIA requester fails to provide sufficiently specific and non-conclusory statements demonstrating its ability to disseminate the disclosures to a reasonably broad audience of persons interested in the subject, that deficiency alone is a sufficient basis for denying the fee waiver request. The *National Security Counselors* court denied the appellant's fee waiver request and stated that the appellant in that case did not identify a discernible audience for the proposed disclosures and was no more than a clearing house for the records it received. The appellant did not actively engage in gathering information to produce original publications and did not produce information about the size of its audience or the amount of traffic received by its Web site. *National Security Counselors,* 848 F.3d at 472, 474. Thus the FTC concludes that a reasonably broad audience interested in the subject is clearly distinct from ''a narrow segment of interested persons'' and it is appropriate to consider whether the requested disclosure is likely to contribute to the understanding of ''a narrow segment of interested persons'' as opposed to ''public understanding.'' [8]

Conclusion

The Commission certifies that the Rule amendments set forth in this final rule do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals who are not ''small entities'' within the meaning of that Act. *Id.* at 601(6). In any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. The Rule amendments also do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of information.

■ For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

■ 1. The authority citation for Part 4 continues to read as follows:

Authority: 15 U.S.C. 46.

■ 2. Amend § 4.8 by revising paragraphs (b)(2)(iii), (b)(6)(i), (b)(7), (e)(2)(i)(C) and (i) to read as follows:

§ 4.8 Costs for obtaining Commission records.

* * * * *

(b) * * *

(2) * * *

(iii) A *representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they

[8] See *Crooker* v. *Department of the Army,* 577 F. Supp. 1220, 1223 (D.D.C. 1984) (rejecting fee waiver under previous standard for information of interest to ''a small segment of the scientific community,'' which would not ''benefit the public at large''), appeal dismissed as frivolous, No. 84–5089 (D.C. Cir. June 22, 1984).

can qualify as disseminators of news) who make their products available for purchase by or subscription by the general public or free distribution to the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (*e.g.,* electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would provide a solid basis for such an expectation, but the past publication record of a requester may also be considered in making such a determination. To qualify for news media status, a request must not be for a nonjournalistic commercial use. A request for records supporting the news dissemination function of the requester is not considered a commercial use.

* * * * *

(6)(i) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission:

Duplication	
Paper to paper copy (up to 8.5″ x 14″)	$0.14 per page.
Converting paper into electronic format (scanning)	Quarter hour rate of operator (Clerical, Other Professional, Attorney/Economist).
Other reproduction (*e.g.*, converting from one electronic format to computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
Electronic Services	
Compact disc (CD)	$3.00 per disc.
DVD	$3.00 per disc.
Videotape cassette	$2.00 per cassette.
Microfilm Services	
Conversion of existing fiche/film to paper	$0.14 per page.
Other Fees	
Certification	$25.00 each.
Express Mail	U.S. Postal Service Market Rates.
Records maintained at Iron Mountain or Washington National Records Center facilities (records retrieval, refiling, et cetera).	Contract Rates.
Other Services as they arise	Market Rates.

* * * * *

(7) *Untimely responses.* (i) Except as provided in paragraphs (b)(7)(ii)–(iv) of this section, search fees for responding to a Freedom of Information Act request will not be assessed for responses that fail to comply with the time limits, as provided at 5 U.S.C. 552(a)(4)(A)(viii), § 4.11(a)(1)(ii) and § 4.11(a)(3)(ii), if there are no unusual or exceptional circumstances, as those terms are defined by 5 U.S.C. 552(a)(6) and § 4.11(a)(1)(ii). Except as provided below, duplication fees will not be assessed for an untimely response, where there are no unusual or exceptional circumstances, made to a requester qualifying for one of the fee categories set forth in paragraph (b)(2) of this section.

(ii) If the Commission has determined that unusual circumstances apply and has provided a timely written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B), the delay in a response is excused for an additional 10 days. If the Commission fails to comply with the extended time limit, it will not charge search fees (or, for a requester qualifying for one of the fee categories set forth in paragraph (b)(2) of this section, will not charge duplication fees).

(iii) If the Commission has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the agency may charge search fees (or, for requesters qualifying for one of the fee categories set forth in paragraph (b)(2) of this section, may charge duplication fees) if timely written notice has been provided to the requester and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(iv) If a court determines that exceptional circumstances exist, the Commission's failure to comply with a time limit shall be excused for the length of time provided by the court order.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(C) The understanding to which disclosure is likely to contribute is public understanding, as opposed to the understanding of the individual requester or a narrow segment of interested persons (*e.g.,* by providing specific information about the requester's expertise in the subject area of the request and about the ability and intention to disseminate the information to the public); and

* * * * *

(i) *Means of payment.* Payment shall be made either electronically through the Department of Treasury's *pay.gov* Web site or by check or money order payable to the Treasury of the United States.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2017–09432 Filed 5–9–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 558

[Docket No. FDA–2017–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications; Changes of Sponsorship

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correcting amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during January and February 2017. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to reflect several changes of sponsorship of applications and to make correcting amendments to improve the accuracy of the regulations.

DATES: This rule is effective May 10, 2017, except for amendatory instruction 3 to 21 CFR 510.600, and amendatory instruction 10 to 21 CFR 522.1002, which are effective May 22, 2017.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Approval Actions

FDA is amending the animal drug regulations to reflect approval actions for NADAs and an ANADA during January and February 2017, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the CVM FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.* Marketing exclusivity and patent information may be accessed in FDA's publication, Approved Animal Drug Products Online (Green Book) at: *http://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts/default.htm.*

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING JANUARY AND FEBRUARY 2017

Approval date	File No.	Sponsor	Product name	Species	Effect of the action	Public documents
January 13, 2017	141–468	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666.	STAFAC (virginiamycin) plus BIO–COX (salinomycin) combination drug Type C medicated feeds.	Chickens	Original approval for prevention of necrotic enteritis and coccidiosis in broiler chickens.	FOI Summary.
January 13, 2017	141–469	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666.	STAFAC (virginiamycin) plus AMPROL (amprolium) combination drug Type C medicated feeds.	Chickens	Original approval for prevention of necrotic enteritis and coccidiosis in broiler chickens.	FOI Summary.
January 13, 2017	141–470	Phibro Animal Health Corp., GlenPointe Centre East, 3d Floor, 300 Frank W. Burr Blvd., Suite 21, Teaneck, NJ 07666.	STAFAC (virginiamycin) plus AVATEC (lasalocid) combination drug Type C medicated feeds.	Chickens	Original approval for prevention of necrotic enteritis and coccidiosis in broiler chickens.	FOI Summary.
January 13, 2017	141–472	Huvepharma AD, 5th Floor, 3A Nikolay Haytov Str.,1113 Sophia, Bulgaria.	STAFAC (virginiamycin) plus CLINACOX (diclazuril) combination drug Type C medicated feeds.	Chickens	Original approval for prevention of necrotic enteritis and coccidiosis in broiler chickens.	FOI Summary.
February 13, 2017	141–445	Intervet, Inc., 2 Giralda Farms,Madison, NJ 07940.	REVALOR–XR (trenbolone acetate and estradiol) Extended-Release Implant.	Cattle	Original approval for increased rate of weight gain and improved feed efficiency during 70 to 200 days after implantation in beef steers and heifers fed in confinement for slaughter.	FOI Summary; EA/FONSI.[1]
February 17, 2017	200–609	Anzac Animal Health, LLC, 218 Millwell Dr., Suite B, Maryland Heights, MO 63043.	DIROBAN (melarsomine dihydrochloride) Powder for Injection.	Dogs	Original approval as a generic copy of NADA 141–042.	FOI Summary.

[1] The Agency has carefully considered an environmental assessment (EA) of the potential environmental impact of this action and has made a finding of no significant impact (FONSI).

Following the approval of ANADA 200–609, Anzac Animal Health, LLC will now be included in the lists of sponsors of approved applications in § 510.600(c) (21 CFR 510.600(c)).

II. Changes of Sponsorship

Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002 has informed FDA that it has transferred ownership of, and all rights and interest in, the following applications to Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201:

File No.	Product name	21 CFR section
141–099	CYDECTIN (moxidectin) Pour-On for Beef and Dairy Cattle	524.1450
141–220	CYDECTIN (moxidectin) Injectable Solution for Beef and Nonlactating Dairy Cattle	522.1450
141–247	CYDECTIN (moxidectin) Oral Drench for Sheep	520.1454

Ceva Sante Animale, 10 Avenue de la Ballastière, 33500 Libourne, France has informed FDA that it has transferred ownership of, and all rights and interest in, the following applications to Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland:

File No.	Product name	21 CFR section
141–420	TILDREN (tiludronate disodium) Powder for Infusion	522.2473
200–481	ALTRESYN (altrenogest) Solution 0.22%	520.48

Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland has informed FDA that it has transferred ownership of, and all rights and interest in, the following application to Ceva Sante Animale, 10 Avenue de la Ballastière, 33500 Libourne, France:

File No.	Product name	21 CFR section
200–587	FERROFORTE (gleptoferron) Solution, 200 mg/mL	522.1055

Nexcyon Pharmaceuticals, Inc., P.O. Box 259158, Madison, WI 53725 has informed FDA that it has transferred ownership of, and all rights and interest in, the following applications to Pegasus Laboratories, Inc., 8809 Ely Rd., Pensacola, FL 32514:

File No.	Product name	21 CFR section
141–272	RECONCILE (fluoxetine hydrochloride) Chewable Tablets	520.980

Accordingly, the animal drug regulations are being amended to reflect these changes of sponsorship. Following this withdrawal of approval, Nexcyon Pharmaceuticals, Inc. is no longer the sponsor of an approved application. Accordingly, it will be removed from the list of sponsors of approved applications in § 510.600(c).

III. Withdrawals of Approval

In addition, during January and February 2017, the following sponsor requested that FDA withdraw approval of the NADAs listed in the following table because the products are no longer manufactured or marketed:

File No.	Sponsor	Product name	21 CFR section
009–505	Sioux Biochemical, Inc., 204 Third St. NW., Sioux Center, IA 51250.	F.S.H.-P (follicle stimulating hormone) Powder for Injection.	522.1002

Elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADA 009–505, and all supplements and amendments thereto, is withdrawn, effective May 22, 2017. Following this withdrawal of approval, Sioux Biochemical, Inc., is no longer the sponsor of an approved application. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect this voluntary withdrawal of approval.

IV. Technical Amendments

We are also making several technical amendments in part 558, which was amended on December 27, 2016 (81 FR 94991), and February 24, 2017 (82 FR 11510), as part of the FDA Center for Veterinary Medicine's (CVM's) Judicious Use Initiative. These actions are being taken to improve the accuracy of the regulations.

This final rule is issued under Section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.360b(i)), which requires **Federal Register** publication of ''notice[s]. . . effective as a regulation,'' of the conditions of use of approved new animal drugs. This rule sets forth technical amendments to the regulations to codify recent actions on approved new animal drug applications and corrections to improve the accuracy of the regulations, and as such does not impose any burden on regulated entities.

Although denominated a rule pursuant to the Federal Food, Drug, and Cosmetic Act, this document does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a ''rule of particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866 which defines a rule as ''an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.'' As such, this document is also not subject to Executive Order 12866.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Effective May 10, 2017, in § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for ''Anzac Animal Health, LLC'', and remove the entry for ''Nexcyon Pharmaceuticals, Inc.''; and in the table in paragraph (c)(2), remove the entry for ''050929'', and numerically add an entry for ''086073.'' The additions read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Anzac Animal Health, LLC, 218 Millwell Dr., Suite B, Maryland Heights, MO 63043	086073
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
086073	Anzac Animal Health, LLC, 218 Millwell Dr., Suite B, Maryland Heights, MO 63043.
* * * * * * *	

§ 510.600 [Amended]

■ 3. Effective May 22, 2017, in § 510.600, in the table in paragraph (c)(1), remove the entry for ''Sioux Biochemical, Inc.'' .''; and in the table in paragraph (c)(2), remove the entry for ''063112''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 4. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.48 [Amended]

■ 5. In § 520.48, in paragraph (b), remove ''013744'' and in its place add ''061623''.

§ 520.980 [Amended]

■ 6. In § 520.980, in paragraph (b), remove ''050929'' and in its place add ''055246''.

§ 520.1454 [Amended]

■ 7. In § 520.1454, in paragraph (b), remove ''000010'' and in its place add ''000859''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 8. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.90b [Amended]

■ 9. In § 522.90b, in paragraph (a), remove ''50, 100, or 250'' and in its place add ''200, 250, or 400''.

§ 522.1002 [Amended]

■ 10. Effective May 22, 2017, in § 522.1002, remove paragraph (b); and redesignate paragraph (c) as paragraph (b).

§ 522.1055 [Amended]

■ 11. In § 522.1055, in paragraph (b), remove ''Nos. 013744 and 061623'' and in its place add ''No. 013744''.

§ 522.1362 [Amended]

■ 12. In § 522.1362, in paragraph (b), remove ''No. 050604'' and in its place add ''Nos. 050604 and 086073''.

§ 522.1450 [Amended]

■ 13. In § 522.1450, in paragraph (b), remove ''000010'' and in its place add ''000859''.

■ 14. In § 522.1662a, revise paragraph (e)(1); and in paragraph (e)(3)(i)(*c*), revise the fifth sentence to read as follows:

§ 522.1662a Oxytetracycline hydrochloride injection.

* * * * *

(e) * * *

(1) *Specifications.* Each milliliter of solution contains 100 milligrams of oxytetracycline hydrochloride.

* * * * *

(3) * * *

(i) * * *

(*c*) * * * Exceeding the highest recommended dose of 5 milligrams per pound of body weight per day, administering more than the recommended number of treatments, and/or exceeding 10 milliliters intramuscularly or subcutaneously per injection site in adult beef and dairy cattle may result in antibiotic residues beyond the withdrawal period. * * *

* * * * *

§ 522.2473 [Amended]

■ 15. In § 522.2473, in paragraph (b), remove ''013744'' and in its place add ''061623''.

■ 16. In § 522.2477, revise paragraph (b)(2) and add paragraph (d)(4) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

* * * * *

(b) * * *

(2) No. 000061 for use as in paragraphs (d)(1)(i)(A), (d)(1)(i)(C), (d)(1)(i)(D), (d)(1)(i)(G), (d)(1)(ii), (d)(1)(iii), (d)(2)(i)(A), (d)(2)(i)(C), (d)(2)(i)(D), (d)(2)(ii), (d)(2)(iii), (d)(3)(i)(A), (d)(3)(ii), (d)(3)(iii), and (d)(4) of this section.

* * * * *

(d) * * *

(4) *Beef steers and heifers fed in confinement for slaughter*—(i) *Amount.* Each extended- and delayed-release implant contains 200 mg trenbolone acetate and 20 mg estradiol (one implant consisting of 10 pellets, each pellet containing 20 mg trenbolone acetate and 2 mg estradiol) per implant dose.

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency during 70 to 200 days after implantation.

(iii) *Limitations.* Implant subcutaneously in the ear only. Do not use in lactating dairy cows or in animals intended for subsequent breeding. Use in these cattle may cause drug residues in milk and/or in calves born to these cows. Do not use in calves to be processed for veal. A withdrawal period has not been established for this product in pre-ruminating calves. Effectiveness and animal safety in veal calves have not been established. Not approved for repeated implantation (reimplantation) with this or any other cattle ear implant during the production phase(s) identified on labeling (beef steers and heifers fed in confinement for slaughter) unless otherwise indicated on labeling because safety and effectiveness have not been evaluated.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 17. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1450 [Amended]

■ 18. In § 524.1450, in paragraph (b)(1), remove ''000010'' and in its place add ''000859''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 19. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

§ 558.4 [Amended]

■ 20. In § 558.4, in paragraph (d), in the Category I table, remove the row entry for ''Penicillin''; and in the Category II table, remove the row entry for ''Sulfamethazine'' the first time it appears only along with the subsequent entries for ''Chlortetracycline'' and ''Penicillin''.

§ 558.76 [Amended]

■ 21. In § 558.76, remove and reserve paragraph (e)(1)(vii).

■ 22. In § 558.115, revise paragraph (d)(4) to read as follows:

§ 558.115 Carbadox.

* * * * *

(d) * * *

(4) Carbadox may also be used in combination with oxytetracycline as in § 558.450.

■ 23. Amend § 558.128 as follows:

■ a. In paragraph (b)(1), remove ''50, 65, or 100'' and in its place add ''50, 90, or 100'';

■ b. In paragraphs (e)(1)(i) and (v), in the ''Limitations'' column, remove ''Do not feed to chickens producing eggs for human consumption.'' and in its place add ''For No. 066104: Do not feed to chickens producing eggs for human consumption.'';

■ c. In paragraph (e)(3)(v), in the ''Sponsor'' column, add ''054771'' before ''069254'';

■ d. In paragraph (e)(4)(iii), in the ''Indications for use'' column, remove ''anaplsmosis'' and in its place add ''anaplasmosis''; and

■ e. Redesignate paragraphs (e)(4)(xxiv) and (xxv) as paragraphs (e)(4)(xxv) and (xxvi), respectively, and add new paragraph (e)(4)(xxiv).

The addition reads as follows:

§ 558.128 Chlortetracycline.

* * * * *

(e) * * *

(4) * * *

Chlortetracycline amount	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(xxiv) 25 to 2,800 to provide 350 mg/head/day.	Lasalocid, 30 to 181.8.	Beef cattle weighing under 700 pounds: For control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline; and for the control of coccidiosis caused by *Eimeria bovis* and *E. zuernii*.	Hand feed continuously at a rate of 350 mg chlortetracycline and 1 mg lasalocid per 2.2 lb. body weight daily to cattle with a maximum of 360 mg of lasalocid per head per day. Do not allow horses or other equines access to feeds containing lasalocid. No withdrawal period is required. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. See § 558.311(d) of this chapter. Chlortetracycline and lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771
*	*	*	*	*

* * * * *

§ 558.140 [Amended]

■ 24. In § 558.140, in paragraph (b)(1), remove ''(d)(1)'' and in its place add ''(e)(1)''; and in paragraph (b)(2), remove ''(d)(2)'' and in its place add ''(e)(2)''.

■ 25. In § 558.325, redesignate paragraphs (e)(2)(vii) to (xvi) as

paragraphs (e)(2)(viii) to (xvii), respectively, and add new paragraph (e)(2)(vii) to read as follows:

§ 558.325 Lincomycin.

* * * * *

(e) * * *

(2) * * *

Lincomycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
*	*	*	*	*
(vii) 40	Pyrantel, 800	For the treatment and/or control of swine dysentery; for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum* spp.) infections.	Feed as a single therapeutic treatment at a rate of 1 lb of feed per 40 lb of body weight for animals up to 200 lb and 5 lb of feed per head for animals over 200 lb. Not to be fed to swine that weigh more than 250 pounds. Withdraw 24 hours prior to slaughter. See paragraph (d) of this section. Lincomycin as provided by No. 054771; pyrantel as provided by No. 066104 in § 510.600(c) of this chapter.	066104
*	*	*	*	*

■ 26. In § 558.366, revise paragraph (e) to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(e) Nicarbazin may also be used in combination with:

(1)–(3) [Reserved]

(4) Lincomycin as in § 558.325.

§ 558.485 [Amended]

■ 27. In § 558.485, remove paragraph (e)(1)(iv).

■ 28. In § 558.550, add paragraph (d)(5) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(d) * * *

(5) Salinomycin may also be used in combination with:

(i)–(ii) [Reserved]

(iii) Chlortetracycline as in § 558.128.

(iv) Lincomycin as in § 558.325.

■ 29. Amend § 558.625 as follows:

■ a. Revise paragraph (d)(2);

■ b. Add paragraphs (d)(4) and (5);

■ c. In paragraphs (e)(2)(iv), (v), (viii), (x), (xii), and (xiii), in the ''Limitations'' column, add a new sentence ''See § 558.355(d) in this chapter.'' between the fourth and fifth sentences;

■ d. In paragraph (e)(2)(vi), in the ''Limitations'' column, add a new sentence ''See § 558.355(d) in this chapter.'' between the seventh and eighth sentences; and

■ e. In paragraphs (e)(2)(vii), (ix), (xi), (xiv), and (xv), in the ''Limitations'' column, add a new sentence ''See § 558.355(d) in this chapter.'' between the fifth and sixth sentences.

The revisions and additions read as follows:

§ 558.625 Tylosin.

* * * * *

(d) * * *

(2) The expiration date of VFDs for tylosin medicated feeds must not exceed 6 months from the date of issuance. VFDs for tylosin shall not be refilled.

* * * * *

(4) Tylosin liquid Type B medicated feeds must bear an expiration date of 31 days after the date of manufacture.

(5) Do not use tylosin liquid Type B medicated feeds in any liquid feed containing sodium metabisulfite or in any finished feed (supplement, concentrate, or complete feed) containing in excess of 2 percent bentonite.

* * * * *

■ 30. In § 558.635, revise paragraph (e)(1) to read as follows:

§ 558.635 Virginiamycin.

* * * * *

(e) *Conditions of use*—(1) *Chickens*—

Virginiamycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(i) 20		Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin.	Not for use in layers	066104
(ii) 20	Amprolium 72.6 to 113.5.	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; and for the prevention of coccidiosis caused by *Eimeria tenella*.	For field conditions where only *E. tenella* is the major problem, feed continuously as the sole ration. Use as the sole source of amprolium. Do not use in feeds containing bentonite. Not for use in laying chickens. Amprolium as provided by No. 016592 in § 510.600(c) of this chapter.	066104
(iii) 20	Amprolium 113.5 to 227.	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; and for the prevention of coccidiosis where immunity to coccidiosis is not desired.	For most field conditions as they exist under modern management practices, feed 113.5 g/ton amprolium continuously. Where severe coccidiosis conditions exist, feed 227 g/ton. Use as the sole source of amprolium. Do not use in feeds containing bentonite. Not for use in laying chickens. Amprolium as provided by No. 016592 in § 510.600(c) of this chapter.	066104

Virginiamycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(iv) 20	Diclazuril 0.91	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; and for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mitis* (*mivati),* and *E. maxima.* Because diclazuril is effective against *E. maxima* late in its life cycle, subclinical intestinal lesions may be present for a short time after infection. Diclazuril was shown in studies to reduce lesions scores and improve performance and health of birds challenged with *E. maxima*.	Feed continuously as the sole ration. Do not use in hens producing eggs for human food. Diclazuril as provided by No. 016592 in § 510.600(c) of this chapter.	016592
(v) 20	Lasalocid 68 to 113	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; and for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*.	Feed continuously as the sole ration. Do not feed to laying chickens. For broiler or fryer chickens only. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	066104
(vi) 20	Monensin 90 to 110	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; and as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. maxima,* and *E. mivati*.	Feed continuously as the sole ration. Do not feed to laying chickens. See § 558.355(d) in this chapter. Monensin as provided by No. 058198 in § 510.600(c) of this chapter.	066104
(vii) 20	Salinomycin 40 to 60	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; and for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati*.	Feed continuously as the sole ration. Do not feed to chickens over 16 weeks of age. Do not feed to laying chickens. Not approved for use with pellet binders. May be fatal if accidentally fed to adult turkeys or horses. Salinomycin as provided by No. 016592 in § 510.600(c) of this chapter.	.....
(viii) 20	Semduramicin 22.7	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; and for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E mivati/mitis, E. necatrix,* and *E. tenella*.	Feed continuously as the sole ration. Do not feed to laying hens. Semduramicin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(ix) 20	Semduramicin (biomass) 22.7.	Broiler chickens: For prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; and for the prevention of coccidiosis caused by *Eimeria acervulina, E. brunetti, E. maxima, E mivati/mitis, E. necatrix,* and *E. tenella*.	Feed continuously as the sole ration. Withdraw 1 day before slaughter. Do not feed to laying hens. Semduramicin as provided by No. 066104 in § 510.600(c) of this chapter.	066104

* * * * *

■ 31. In § 558.680, remove paragraph (e) and add paragraph (d)(3) to read as follows:

§ 558.680 Zoalene.

* * * * *

(d) * * *

(3) Zoalene may also be used in combination with:

(i)–(ii) [Reserved]

(iii) Lincomycin as in § 558.325.

Dated: May 4, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–09364 Filed 5–9–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2017–N–0002]

New Animal Drugs; Withdrawal of Approval of a New Animal Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA). This action is being taken at the sponsors' request because these products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective May 22, 2017.

FOR FURTHER INFORMATION CONTACT: Sujaya Dessai, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5761, *sujaya.dessai@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Sioux Biochemical, Inc., 204 Third St. NW., Sioux Center, IA 51250 has requested that FDA withdraw approval of NADA 009–505 for F.S.H.-P (follicle stimulating hormone) Powder for Injection because the product is no longer manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADA 009–505, and all supplements and amendments thereto, is hereby withdrawn, effective May 22, 2017.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of this application.

Dated: May 4, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–09365 Filed 5–9–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–5986–C–02]

RIN 2501–AD81

Revision of Freedom of Information Act Regulation; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction.

SUMMARY: On January 12, 2017, HUD issued a final rule amending HUD's Freedom of Information Act (FOIA) regulation to implement the FOIA Improvement Act of 2016, which enacted a range of procedural changes, including a change to the procedures for withholding information and an amendment to one of the nine FOIA exemptions that authorizes an agency to withhold various records from disclosure. After publication, HUD discovered that a portion of the regulation was not published as intended. Specifically, the published rule deleted several of the nine statutory FOIA disclosure exemptions and duplicated another. HUD also noticed minor technical changes required elsewhere in its regulations. This document corrects HUD's January 12, 2017, final rule and makes the minor technical changes.

DATES: *Effective:* May 10, 2017.

FOR FURTHER INFORMATION CONTACT: Helen Goff Foster, Chief Administrative Officer, Office of Administration, Department of Housing and Urban Development, 451 7th Street SW., Room 6100, Washington, DC 20410–0500, telephone number 1–202–402–6838 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On January 12, 2017 (82 FR 3623), HUD issued a final rule amending HUD's Freedom of Information Act (FOIA) regulation at 24 CFR part 15 to implement the FOIA Improvement Act of 2016 (Pub. L. 114–185, approved June 30, 2016) (2016 Act). Upon review of the published rule, HUD determined that § 15.107 was not published as intended. The amendatory instruction excluded three of the nine statutory FOIA exemptions (5 U.S.C. 552(b)) and included a duplicate exemption in § 15.107(b).

HUD's January 12, 2017, final rule sought to restructure § 15.107 by adding paragraph (a) to provide that HUD shall withhold information only if it is reasonably foreseeable that disclosure would harm an interest protected by an exemption, or if disclosure is prohibited by law. HUD also sought to redesignate the undesignated introductory text as paragraph (b), redesignate paragraphs (a) through (i) as (b)(1) through (b)(9), and amend redesignated paragraph (b)(5), the deliberative process privilege, to add a sunset clause after 25 years.

As discussed above, HUD's final rule did not accurately restructure § 15.107 as intended. This final rule restates in whole § 15.107 to reflect the changes required by the 2016 Act to the deliberative process privilege exemption, and restores all other FOIA disclosure exemptions.

In addition, HUD is fixing an incorrect Web site link in § 15.101, removing two misplaced words in § 15.105, and correcting the number of days a FOIA requester has to appeal an adverse determination in § 15.109(a), consistent with the change HUD made in § 15.105(d)(2)(iv).

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 15 is corrected by making the following correcting amendments:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

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

Authority: 42 U.S.C. 3535(d), 5 U.S.C. 552.

§ 15.101 [Amended]

■ 2. In § 15.101(b)(2), remove the link ''*http://www/data/gov*'' and add in its place the link ''*http://www.data.gov*''.

§ 15.105 [Amended]

■ 3. In § 15.105, in paragraph (d)(2)(iv) remove the word ''and'' and in paragraph (d)(2)(v) remove the word ''and''.

■ 4. Revise § 15.107 to read as follows:

§ 15.107 Documents generally protected from disclosure.

(a) HUD shall withhold information only if HUD reasonably foresees that disclosure would harm an interest protected by an exemption as provided in paragraph (b) of this section, or disclosure is prohibited by law. HUD will consider whether partial disclosure of information is possible whenever

HUD determines that a full disclosure of a requested record is not possible, and will take reasonable steps necessary to segregate and release nonexempt information. Nothing in this section requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure as provided in paragraph (b)(3) of this section.

(b) The FOIA contains nine exemptions (5 U.S.C. 552(b)) that authorize agencies to withhold various records from disclosure. With regard to certain types of records, HUD generally applies the exemptions as follows:

(1) *Classified documents.* Exemption 1 (5 U.S.C. 552(b)(1)) protects classified national defense and foreign relations information. HUD seldom relies on this exception to withhold documents. However, where applicable, HUD will refer a request for records classified under Executive Order 13526 and the pertinent records to the originating agency for processing. HUD may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of the existence of the information itself is classified.

(2) *Internal agency rules and practices.* Exemption 2 (5 U.S.C. 552(b)(2)) protects records relating to internal personnel rules and practices.

(3) *Information prohibited from disclosure by another statute.* Exemption 3 (5 U.S.C. 552(b)(3)) protects information that is prohibited from disclosure by another Federal law. HUD generally will not disclose competitive proposals prior to contract award, competitive proposals that are not set forth or incorporated by reference into the awarded contract (see 41 U.S.C. 4702), or, during the selection process, any covered selection information regarding such selection, either directly or indirectly (see 42 U.S.C. 3537a).

(4) *Commercial or financial information.* Exemption 4 (5 U.S.C. 552(b)(4)) protects trade secrets and commercial or financial information obtained from a person and privileged or confidential. HUD will handle this type of information as provided by § 15.108.

(5) *Certain interagency or intra-agency communications.* Exemption 5 (5 U.S.C. 552(b)(5)) protects interagency or intra-agency communications that are protected by legal privileges, such as the attorney-client privilege, attorney work-product privilege, or communications reflecting the agency's deliberative process. The deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) *Personal privacy.* Exemption 6 (5 U.S.C. 552(b)(6)) protects information involving matters of personal privacy. This information may include personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Names, addresses, telephone numbers, and email addresses of persons residing in public or assisted housing or of borrowers in FHA-insured single family mortgage transactions generally will not be disclosed.

(7) *Law enforcement records.* Exemption 7 (5 U.S.C. 552(b)(7)) protects certain records or information compiled for law enforcement purposes. This exemption protects records where the production could reasonably be expected to interfere with enforcement proceedings; for example, the names of individuals who have filed fair housing complaints. The protection of this exemption also encompasses, but is not limited to, information in law enforcement files that could reasonably be expected to constitute an unwarranted invasion of personal privacy; the names of confidential informants, and techniques and procedures for law enforcement investigations, or guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law.

(8) *Supervision of financial institutions.* Exemption 8 (5 U.S.C. 552(b)(8)) protects information relating to the supervision of financial institutions. For purposes of Exemption 8, HUD is an ''agency responsible for the regulation and supervision of financial institutions'' for purposes of monitoring fair housing compliance.

(9) *Wells.* Exemption 9 (5 U.S.C. 552(b)(9)) protects geological information on wells.

§ 15.109 [Amended]

■ 5. In § 15.109(a), remove the number ''30'' and add in its place the number ''90''.

Dated: May 4, 2017.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 2017–09465 Filed 5–9–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0309]

Safety Zone, Chicago Harbor, Navy Pier East, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier East Safety Zone within the Chicago Harbor on June 27, 2017. This action is necessary and intended to ensure the safety of life and property on navigable waters prior to, during, and immediately after the fireworks display. During the enforcement period listed below, the Coast Guard will enforce restrictions upon, and control movement of vessels that transit this regulated area with the approval from the Captain of the Port Lake Michigan.

DATES: The regulation in 33 CFR 165.933 will be enforced from 8:45 p.m. until 9:45 p.m. on June 27, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Lindsay Cook, Waterways Management Division, Marine Safety Unit Chicago, at 630–986–2155, email address *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL listed in 33 CFR 165.933, on June 27, 2017 from 8:45 p.m. until 9:45 p.m., for a barge based fireworks display. This action is being taken to provide for the safety of life and property on navigable waterways before, during, and immediately after the fireworks display. As specified in 33 CFR 165.933 this safety zone encompasses all waters of Lake Michigan within Chicago Harbor between the east end of Navy Pier and the Chicago Harbor breakwater bounded by coordinates beginning at 41°53′37″ N., 087°35′26″ W.; then south to 41°53′24″ N., 087°35′26″ W.; then east to 41°53′24″ N., 087°35′55″ W.; then north to 41°53′37″ N., 087°35′55″ W.; then back to the point of origin (NAD 83). During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Lake Michigan or a Captain of the Port designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan, or his or her on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.931 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 notice of this enforcement via Broadcast Notice to Mariners and listing this event in the Local Notice to Mariners. If the Captain of the Port or a designated representative determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via Channel 16, VHF–FM.

Dated: May 4, 2017.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2017–09444 Filed 5–9–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0308]

Security Zone; Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the security zone for the Portland Rose Festival on the Willamette River in Portland, OR, from 8 a.m. on June 7, 2017 through noon on June 12, 2017. This action is necessary to ensure the security of vessels participating in the 2017 Portland Rose Festival on the Willamette River during the event. Our regulation for the Security Zone Portland Rose Festival on the Willamette River identifies the regulated area. During the enforcement period, no person or vessel may enter or remain in the security zone without permission from the Sector Columbia River Captain of the Port.

DATES: The regulations in 33 CFR 165.1312 will be enforced from 8 a.m. on June 7, 2017, through noon on June 12, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LCDR Laura Springer, Waterways Management Division, MSU Portland, Oregon, Coast Guard; telephone 503–240–9319, email *MSUPDXWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the security zone for the Portland Rose Festival detailed in 33 CFR 165.1312 from 8 a.m. on June 7, 2017, through noon on June 12, 2017. This action is necessary to ensure the security of vessels participating in the 2017 Portland Rose Festival on the Willamette River during the event. Under the provisions of 33 CFR 165.1312 and subpart D of part 165, no person or vessel may enter or remain in the security zone, consisting of all waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges, without permission from the Sector Columbia River Captain of the Port. Persons or vessels wishing to enter the security zone may request permission to do so from the on-scene Captain of the Port representative via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under authority 33 CFR 165.1312 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: May 4, 2017.

D.F. Berliner,

Captain, U.S. Coast Guard, Acting Captain of the Port, Sector Columbia River.

[FR Doc. 2017–09408 Filed 5–9–17; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2017–6]

Designation of Agent To Receive Notification of Claimed Infringement

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: This final rule makes non-substantive technical amendments to the U.S. Copyright Office's regulations governing the submission of designated agent and service provider information to the Office pursuant to the Digital Millennium Copyright Act (''DMCA'').

DATES: Effective May 10, 2017.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at *sdam@loc.gov,* or Jason E. Sloan, Attorney-Advisor, by email at *jslo@loc.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION: Effective December 1, 2016, the Copyright Office adopted new regulations governing the submission of designated agent and service provider information to the Office pursuant to the Digital Millennium Copyright Act (''DMCA'') in connection with the implementation of a new electronic registration system launched the same day.[1] Under that rule, a person creating a user account for the electronic registration system is required to provide contact information for two people—a primary contact and secondary contact. Once the user account is set up, the user can then submit service provider and designated agent contact information. The contact information for the user account is collected by the Copyright Office solely for ''administrative purposes,''[2] *e.g.,* for Office correspondence, and is not made public; it is distinct from the information that must be provided for each service provider and designated agent.

As a result of user feedback about the new system, the Office has reconsidered the need for some of the contact information required to be provided under the current rule as part of the user account creation process. Specifically, the Office has been informed that in some cases smaller service providers have either been confused by some of the requirements or have had difficulty following them. For example, a service provider who is an individual blogger, acting as his or her own primary point of contact for communications with the Office, may not have a positional/title or organization, or may have difficulty finding someone to act as a secondary point of contact.

Upon further reflection, the Office believes that some of the currently required information, while helpful, is not essential to facilitating efficient communication with the Office, and on balance need not be collected. Consequently, the Office has determined that in connection with the user account creation process, it will no longer be mandatory to provide the position or title, organization, or physical mail address for the individual named as the primary point of contact for communications with the Office. The Office will also stop requiring users to provide a secondary point of contact for communications with the Office.

[1] 81 FR 75695 (Nov. 1, 2016).

[2] *See* 37 CFR 201.38(c)(1).

The Office is removing the position/title and address fields for the primary and secondary account contacts from the system; the Office has determined that such information is not necessary for Office communications. The organization field and fields relating to the secondary contact will remain, but will be made optional, as certain service providers might find it useful to include this information. Nonetheless, the Office still strongly encourages all service providers to provide a secondary contact as a backup to best ensure that important communications from the Office—especially renewal reminders—reach the appropriate person.

Because the current regulation only requires this information for administrative purposes, this final rule is a non-substantive, procedural change not ''alter[ing] the rights or interests of parties,'' and thus is not subject to the notice and comment requirements of the Administrative Procedure Act.[3] Furthermore, the Office finds good cause that permitting notice and comment would be ''contrary to the public interest'' in this instance.[4] Because this final rule will make it even easier and faster for service providers to register an account with the new system, and should reduce any confusion or burden on smaller service providers, it is in the public's best interest that it take effect without delay. For these same reasons, the Office is making this final rule effective on May 10, 2017, when updates to the electronic system will be made to implement it.[5]

List of Subjects in 37 CFR Parts 201 and 202

Copyright.

Final Regulations

For the reasons set forth above, the Copyright Office amends 37 CFR part 201 as follows:

[3] *See Nat'l Mining Ass'n* v. *McCarthy,* 758 F.3d 243, 250 (D.C. Cir. 2014) (''The critical feature of a procedural rule is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'') (internal quotation marks omitted); 5 U.S.C. 553(b) (notice and comment not required for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'').

[4] *See* 5 U.S.C. 553(b) (notice and comment not required ''when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest'').

[5] *See id.* § 553(d) (''The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.'').

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.1 [Amended]

■ 2. Amend § 201.1 by removing paragraph (c)(3) and redesignating paragraphs (c)(4) through (8) as paragraphs (c)(3) through (7), respectively.

§ 201.2 [Amended]

■ 3. Amend § 201.2 in paragraph (b)(5) by removing ''201.1(c)(5)'' and adding in its place ''201.1(c)''.

■ 3. Amend § 201.38 as follows:

■ a. In paragraph (b)(1)(ii), remove ''an email address and/or physical mail address'' and add in its place ''an email address''; and

■ b. Revise paragraph (c)(1)(i).

The revision reads as follows:

§ 201.38 Designation of agent to receive notification of claimed infringement.

* * * * *

(c) * * *

(1) * * *

(i) The first name, last name, telephone number, and email address of a representative of the service provider who will serve as the primary point of contact for communications with the Office.

* * * * *

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 4. The authority citation for part 202 continues to read as follows:

Authority 17 U.S.C. 408(f), 702

§ 202.5 [Amended]

■ 4. Amend § 202.5 in paragraph (d) by removing ''201.1(c)(4)'' and adding in its place ''201.1(c)''.

Dated: April 19, 2017.

Karyn Temple Claggett,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2017–09395 Filed 5–9–17; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

State and Local Assistance

CFR Correction

■ In Title 40 of the Code of Federal Regulations, parts 1 to 49, revised as of July 1, 2016, on page 517, in § 35.6280, paragraph (a)(2) is revised to read as follows:

§ 35.6280 Payments.

(a) * * *

(2) *Interest.* The interest a recipient earns on an advance of EPA funds is subject to the requirements of 2 CFR 200.305.

* * * * *

[FR Doc. 2017–09486 Filed 5–9–17; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0308; FRL–9961–86–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Stage II Gasoline Vapor Recovery Requirements for Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. The revision includes regulatory amendments that allow gasoline dispensing facilities (GDFs) located in Northern Virginia, Fredericksburg, and Richmond that are currently required to install and operate vapor recovery equipment on gasoline dispensers (otherwise referred to as Stage II vapor recovery, or simply as Stage II) to decommission that equipment by January 2017. In prior rulemaking actions, EPA already approved Virginia's demonstrations that decommissioning Stage II is consistent with the Clean Air Act (CAA) and EPA guidance. The intended effect of this action is to approve Virginia's revised petroleum transfer and storage regulation to allow for decommissioning of Stage II equipment.

DATES: This final rule is effective on June 9, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0308. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 21, 2016, EPA published a notice of direct final rulemaking (81 FR 72724) and an accompanying proposed rulemaking (NPR) (81 FR 72757) for the Commonwealth of Virginia. Therein, EPA proposed approval of Virginia's revised 9 VAC 5, Chapter 40, Rule 4–37 (Rule 4–37), *Emission Standards for Petroleum Liquid Storage and Transfer Operations.* These regulations had been amended to allow for the decommissioning of Stage II vapor recovery systems at GDFs in areas of the Commonwealth subject to Stage II under Virginia's SIP. The SIP revision was submitted by the Virginia Department of Environmental Quality (VA DEQ) on October 15, 2015.

After receiving adverse comments during the public comment period on its proposed action, EPA withdrew the October 21, 2016 direct final rule in a notice published in the December 9, 2016 (81 FR 89007) **Federal Register**. As indicated in the October 21, 2016 direct final rule, EPA's separate proposed rule published at the same time serves as the proposed rulemaking.

I. Background

Stage II vapor recovery is a means of capturing volatile organic compounds (VOCs) emitted as vapors displaced from a vehicle's gas tank during refueling operations, via vapor controls equipped on a gasoline pump at a GDF. Stage II vapor recovery uses special refueling nozzles and coaxial hoses on the gasoline dispenser to capture these vapors that might otherwise be emitted to the atmosphere during vehicle fueling. These gasoline vapors contain air emissions and serve as precursors to the formation of ground-level ozone—an ambient air pollutant regulated under the CAA. Under section 182(b)(3) of the CAA, areas classified as moderate or worse ozone nonattainment were required to adopt a Stage II vapor recovery program. Areas in the Ozone Transport Region (OTR) were required under section 184(a) and (b)(2) to adopt Stage II, or a comparable measure that could achieve similar emission reductions. Virginia currently has three SIP-approved Stage II programs in the Richmond, Fredericksburg, and the Virginia portion of the Washington, DC areas.

The Richmond Stage II program was instituted as a result of the area being designated nonattainment under the 1-hour ozone National Ambient Air Quality Standards (NAAQS) by the CAA of 1990. The Richmond Stage II area (the Richmond Area) has since been redesignated as attainment for both the 1-hour ozone NAAQS (November 17, 1997; 62 FR 61237) and for the 1997 8-hour ozone NAAQS (June 1, 2007; 72 FR 30485). However, Virginia's SIP-approved maintenance plans for the 1-hour and 1997 8-hour ozone NAAQS relied upon emissions reductions from Stage II as a means to ensure continued maintenance of the ozone NAAQS. Although the 1-hour ozone NAAQS was revoked on June 15, 2005, EPA's implementation rule for the 1997 ozone NAAQS retained Stage II as a required measure to prevent backsliding under the NAAQS.

The Virginia portion of the Washington, DC-MD-VA ozone nonattainment area (hereafter referred to as the Washington Area) was subject to Stage II not only because of its designation as nonattainment for the ozone NAAQS, but also because this area lies in a CAA-established OTR. The area was designated serious nonattainment under the 1-hour ozone NAAQS. The Washington Area was later designated moderate nonattainment under the 1997 8-hour ozone NAAQS, as was the neighboring Fredericksburg ozone nonattainment area (referred to herein as Fredericksburg Area). On November 13, 2002, EPA reclassified the Virginia portion of the Washington, DC-MD-VA area as severe nonattainment under the 1-hour ozone NAAQS. 67 FR 68805. Virginia subsequently submitted and EPA approved attainment plans for the 1-hour and 1997 8-hour NAAQS for the Washington Area, and EPA also approved a redesignation and maintenance plan for the Fredericksburg Area. Although the 1-hour ozone NAAQS was revoked effective June 2005, EPA's implementation rule for the 1997 ozone NAAQS retained Stage II-related requirements under CAA section 182(b)(3) for certain areas. Stage II continued to apply in the Washington, DC nonattainment area as an anti-backsliding measure under the implementation rules for the 1997 and 2008 ozone NAAQS. The 2008 ozone implementation rule similarly required that Stage II remain in the Fredericksburg Area as a maintenance measure pending EPA determination that onboard refueling vapor recovery (ORVR) was in widespread use and Virginia could demonstrate that Stage II was no longer a necessary component of its air quality plans.

Virginia adopted Stage II regulations in the November 2, 1992 edition of the Virginia Register of Regulations (Vol 9, Issue 3), effective January 1, 1993. Virginia submitted its Stage II regulation to EPA as a SIP revision on November 5, 1992. EPA approved Virginia's Stage II SIP revision on June 23, 1993 (59 FR 32353).

ORVR is an emissions control system equipped on new, gasoline-powered vehicles (beginning with model year 1998 vehicles) for the purpose of capturing refueling gasoline vapors before they escape the vehicle gas tank and to store them in an underhood canister for later engine combustion. Section 202(a)(6) of the CAA directed that Stage II requirements under section 182(b)(3) would no longer apply to moderate ozone nonattainment areas upon promulgation of standards for ORVR systems as part of the emission control system on newly manufactured vehicles. Section 202(a)(6) further provides that EPA may, by rule, waive the section 182(b)(3) Stage II requirements for ozone nonattainment areas designated serious or worse upon EPA's determination that ORVR technology is in ''widespread use.'' EPA issued its widespread use determination on May 16, 2012 (77 FR 28772), indicating that ORVR was in widespread use throughout the U.S. vehicle fleet, and that at that time ORVR vehicles were essentially equal to and would soon surpass the emissions reductions achieved by Stage II alone.

Virginia has examined whether Stage II vapor recovery continues to be necessary for ozone control purposes, given the prevalence of ORVR-equipped gasoline-powered vehicles and the redundancy between ORVR and Stage II systems in reducing gasoline tank displacement emissions associated with refueling. Additionally, Virginia analyzed the interference effect between certain Stage II systems and ORVR systems, which can result in VOC emissions being greater where ORVR and certain Stage II systems are simultaneously used than they would be

if only Stage II or ORVR were used. From these analyses, Virginia determined that Stage II vapor recovery is no longer necessary as a control measure to address ambient ozone in the Washington, Fredericksburg, and Richmond areas.

On November 12, 2013 and March 18, 2014, Virginia submitted SIP revisions to EPA that evaluated the emissions impacts to each of the affected Virginia Stage II areas associated with removal of the program. Those SIP revisions amended the ozone maintenance plan for the Richmond Area and the attainment plan for the Washington Area to demonstrate that removal of the Stage II programs would not interfere with those areas' ability to attain and maintain any NAAQS. On May 26, 2015 (80 FR 29959), EPA approved the Commonwealth's March 18, 2014 SIP revision amending the approved ozone attainment plan for the Virginia portion of Washington Area and the approved ozone maintenance plan for the Fredericksburg Area to remove the Stage II program. On August 11, 2014, EPA approved Virginia's November 12, 2013 SIP revision amending the approved ozone maintenance plan SIP for the Richmond Area to remove the Stage II program. 79 FR 46711. None of these approvals were challenged in court by any objecting party.

II. Summary of SIP Revision and EPA Analysis

On October 15, 2015, the Commonwealth of Virginia submitted a formal revision to remove the requirements for Stage II vapor recovery controls in Virginia ozone nonattainment areas from the approved Virginia SIP (Revision C14). This October 2015 SIP revision contains the amended Stage II vapor recovery regulatory provisions of Virginia Rule 4–37, entitled ''Emission Standards for Volatile Organic Compounds from Petroleum Liquid Storage and Transfer Operations.'' The October 2015 SIP revision includes Virginia's regulatory amendments listed at 9VAC5–20 and 9VAC5–40 that were adopted by Virginia in June of 2014, and published in the Virginia Register of Regulations on June 15, 2015 which removed Stage II vapor recovery requirements from Virginia law governing petroleum liquid storage and transfer operations. The purpose of this SIP revision is to remove Stage II vapor recovery requirements from the Commonwealth's SIP. Under Virginia's amended Rule 4–37, gasoline stations in the Washington and Fredericksburg Areas were no longer required to employ Stage II systems as of January 2014, and Richmond Area stations were no longer required to employ Stage II vapor recovery systems as of January 2017. Facilities electing to decommission Stage II are now required under Rule 4–37 to meet established decommissioning procedures, and facilities electing to continue to operate Stage II are required to continue to operate properly and maintain their Stage II systems.

As described in the Background section of this action, EPA already approved Virginia's SIP revisions submitted on November 12, 2013 and March 18, 2014 demonstrating that removal of Stage II as a control measure from the SIP will not interfere with the Washington, Fredericksburg, and Richmond Areas' ability to attain and maintain any applicable NAAQS. VA DEQ examined whether Stage II is necessary as an ozone control measure and determined this program is no longer beneficial to air quality in the Commonwealth, given the widespread use of ORVR equipment in new vehicles manufactured since 1998 and the inherent redundancies between Stage II vapor recovery equipment and vehicle-based ORVR systems, and in light of the incompatibilities between some Stage II vapor recovery equipment and vehicle-based, ORVR systems.

EPA has evaluated the regulatory amendments adopted by Virginia to its Rule 4–37 to rescind Stage II vapor recovery requirements for new and existing stations, to adopt decommissioning procedures and requirements for GDFs electing to no longer operate existing Stage II systems, and to require the continued operation and maintenance of Stage II equipment for stations that elect to continue participation in the program. Virginia's regulatory changes meet EPA guidance and the related requirements of sections 182 and 202 of the CAA with respect to the applicability of Stage II requirements after EPA's issuance of its ORVR widespread use determination in 2012, as described in the Background section of this document. Virginia has properly analyzed the impact of removal of the Stage II program in adherence with EPA's ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,'' dated August 7, 2012 (EPA–457/B–12–001), including applicability of Stage II or comparable measures in the OTR, per section 184 of the CAA. As previously found by EPA, Virginia has demonstrated that removal of the Stage II requirement does not interfere with any affected area's ability to attain or maintain any NAAQS, or with any other applicable requirement of the CAA, under section 110(l) of the CAA.

For further information on Virginia's analysis of the impacts of removal of the Stage II programs in the Washington and Fredericksburg Areas, please refer to EPA's May 26, 2015 approval of the SIP demonstration applicable to those areas. *See* 80 FR 29959. For further information with respect to Virginia's analysis of the removal of Stage II in the Richmond Area, please refer to EPA's August 11, 2014 approval of the Commonwealth's demonstration applicable to Richmond. *See* 79 FR 46711.

III. Response to Comments

EPA received several anonymous comments on the October 21, 2016 proposed rulemaking. These comments are summarized below with EPA's response.

Comment: The commenter states that Virginia should retain Stage II requirements, as they will keep Virginia's standards for good air quality at its highest when there is a legal requirement that must be followed.

Response: EPA disagrees with the commenter's assertion that retaining Stage II as a regulatory requirement will maintain air quality in the regulated Virginia areas in question. Virginia demonstrated in two prior EPA-approved SIP revisions (80 FR 29959 (May 26, 2015) and 79 FR 46711 (August 11, 2014)) that retaining Stage II in the presence of widespread use of ORVR equipment not only does not further reduce refueling emissions—it actually increases emissions due to an incompatibility between certain Stage II equipment and ORVR. Removal of Virginia Stage II regulatory requirements will not interfere with any of the Virginia areas' ability to achieve or maintain any NAAQS. Virginia's Stage II removal demonstration SIP revisions which EPA approved clearly showed removal of Stage II requirements would not interfere with any applicable CAA requirement concerning reasonable further progress or attainment of a NAAQS or any other CAA requirement, per section 110(l) of the CAA. Virginia's SIP-approved demonstrations show that ORVR systems alone will achieve emission reductions equivalent to Stage II and ORVR combined in all three Virginia areas which were subject to Stage II. Virginia's noninterference demonstrations were performed in accordance with EPA's final rule determining that ORVR is now in ''widespread use'' in the national motor vehicle fleet (May 16, 2012 (77 FR 28770)) and with EPA's ''Guidance on Removing Stage II Vapor Control

Programs from State Implementation Plans and Assessing Comparable Measures'' (EPA–457/B–12–001, August 7, 2012), hereafter referred to as EPA's Stage II Removal Guidance. A copy of this guidance has been placed in the public docket for this action.

Virginia's March 18, 2014 SIP revision demonstrated that removal of Stage II in the Washington and Fredericksburg Areas would not increase emissions under the approved ozone attainment plan for the Northern Virginia portion of the Washington, DC nonattainment area or the approved ozone maintenance plan for the Fredericksburg Area, and would not interfere with these areas' ability to attain and maintain the ozone or any other NAAQS. EPA approved Virginia's March 18, 2014 SIP revision on May 26, 2015 (80 FR 29959).

Virginia's November 12, 2013 SIP revision amended the approved maintenance plan SIP for the Richmond Area to demonstrate that removal of the Stage II program would not interfere with this area's ability to attain the ozone NAAQS. EPA approved Virginia's November 12, 2013 SIP revision on August 11, 2014 (79 FR 46711).

These prior, approved Stage II removal demonstration SIPs show that a vast majority of Virginia vehicles being refueled at GDFs are now equipped with vehicle-based ORVR systems, and that these ORVR systems will better control the VOC refueling emissions previously captured by station-based Stage II equipment, making Stage II no longer necessary. Given known incompatibilities between certain types of Stage II equipment used in Virginia and ORVR systems, removal of Stage II regulatory requirements and the resultant decommissioning of Stage II systems has been demonstrated by Virginia (in its November 2013 and March 2014 SIP revisions) to not interfere with air quality in the applicable areas of the Commonwealth. The science and rationale behind allowing Virginia to remove Stage II equipment from these areas was fully discussed in the SIP noninterference demonstrations approved by EPA on August 11, 2014 and May 26, 2015. This action relies upon those demonstrations and serves only to remove the Stage II requirements, which Virginia has already removed from its own regulations, from the SIP.

Therefore, the commenter's assertion that keeping Stage II as a requirement along with ORVR would better maintain air quality than ORVR alone is contrary to the prior air quality demonstration SIPs submitted by Virginia (and approved by EPA), which demonstrate that air quality in affected areas of Virginia is not adversely impacted by removal of the Stage II requirement.

Comment: The commenter generally supports EPA's action to approve Virginia's regulatory amendments to remove Stage II, as use of ORVR and Stage II is ''terribly inefficient.'' However, the commenter argues that the term ''widespread use'' in reference to ORVR is vague. The commenter wants EPA to ensure that policies that require ORVR be mandatory be implemented in place of Stage II. The commenter asserts that ORVR is better than Stage II as a means of recovering refueling emissions, but having neither in place would be worse than having them both—even if they are incompatible.

Response: Preliminarily, EPA disagrees with the commenter's assertion that ORVR is not required or that policies requiring ORVR are not in place. EPA promulgated ORVR standards on April 6, 1994 at 59 FR 16262, codified at 40 CFR parts 86 (including 86.098–8), 88, and 600. Beginning model year 1998, ORVR was phased-in as a required system on new passenger vehicles, and has been required on nearly all new highway vehicles manufactured since model year 2006. Consequently, ORVR is used in such vehicles and controls VOC emissions throughout the United States, no matter how any areas are designated and classified with respect to the ozone NAAQS.

Under CAA section 182 (b)(3), Stage II is required to be used at GDFs located in areas classified as serious or worse ozone nonattainment areas, and consequently controls VOC emissions only in such areas and in areas covered by a ''comparable measures'' SIP under section 184. Originally, CAA section 182(b)(3) also required Stage II in moderate ozone nonattainment areas; however, section 202(a)(6) directed that the moderate area requirement no longer applied after EPA promulgated ORVR standards in 1994. EPA issued a final rule on May 16, 2012 (77 FR 28770) determining that ORVR was then in ''widespread use'' in the national motor vehicle fleet, under authority of section 202(a)(6). As a result, EPA waived Stage II requirements under section 182 for ozone nonattainment areas classified as serious or above. States previously required to implement Stage II under section 182(b)(3) could take action to remove their Stage II program requirements via revisions to their SIPs.

EPA disagrees with the commenter's assertion that ''widespread use'' is vaguely defined and that EPA does not have clearly defined policies that require ORVR in place of Stage II. EPA's May 2012 ''widespread use'' determination rule, which no one timely challenged and cannot be challenged now, clearly defined what constitutes widespread use of ORVR, and sets forth how EPA's widespread use determination relates to states with Stage II programs in their SIPs. Subsequent to issuance of the ''widespread use'' determination action, EPA issued its Stage II removal guidance document, for use by states in developing SIP revisions to remove Stage II while demonstrating that interference with attainment or maintenance of a NAAQS will not occur. Virginia's prior, EPA-approved, Stage II removal demonstration SIP revisions show not only that removal of Stage II will not jeopardize air quality goals for affected Washington, Fredericksburg, and Richmond Areas, but also that ORVR alone will achieve greater emission reductions than ORVR in combination with Stage II in those Virginia Stage II program areas.

Finally, because EPA has stated that ORVR is required, EPA disagrees with the implication from the commenter that our approval of the removal of Stage II from the Virginia SIP would leave no vapor recovery system in place. ORVR provides for vapor recovery.

IV. Final Action

In accordance with section 110 of the CAA, EPA is approving Virginia's revision to its SIP to amend its Stage II vapor recovery regulatory provisions to remove the requirement for Virginia area GDFs to operate Stage II in areas formerly subject to Stage II under CAA sections 182 and 184, and to add provisions to allow GDFs currently operating Stage II equipment the option to decommission those systems.

Specifically, EPA is approving and incorporating by reference the Virginia SIP revision that amended the Commonwealth's Rule 4–37 governing petroleum liquid and transfer operations applicable to existing stationary sources, which includes modified requirements for the Commonwealth's Stage II vapor recovery program in 9–VAC5–5220 and 9VAC5–5270, effective July 20, 2015.

EPA is approving this SIP revision because Virginia has previously demonstrated through its two prior approved Stage II SIP noninterference demonstrations that removal of the Stage II program regulatory requirement will not result in an increase in emissions that could interfere with Virginia's attainment or maintenance of the ozone NAAQS or any other applicable CAA requirement.

V. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its revised Stage II program regulations consistent with the relevant federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VI. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Virginia's amendments to Article 37 of 9VAC5–40 and also amendments to Virginia's general provisions at 9VAC5–20–21, reflecting the addition of a new source of documents incorporated by reference, effective on July 20, 2015. Additionally, EPA is approving Virginia's amended Rule 4–37 governing petroleum liquid and transfer operations applicable to existing stationary sources, specifically 9–VAC5–5220 and 9VAC5–5270, effective July 20, 2015.

Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to amend Virginia's Stage II regulatory provisions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 14, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

■ 2. In § 52.2420:

■ a. The table in paragraph (c) is amended by revising the entry for Section 5–40–5220 and by adding an entry for Section 5–40–5270; and

■ b. The table in paragraph (e) is amended by revising the entry for ''Documents Incorporated by Reference (9 VAC 5–20–21, Section B.)'' and by adding an entry for ''Documents Incorporated by Reference (9 VAC 5–20–21, Section E.15.).''

The revisions and additions read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 40 Existing Stationary Sources				
*	*	*	*	*
Part II Emissions Standards				
*	*	*	*	*
Article 37 Emission Standards for Petroleum Liquid Storage and Transfer Operations (Rule 4–37)				
*	*	*	*	*
5–40–5220	Standard for Volatile Organic Compounds.	07/30/2015	05/10/2017 [Insert **Federal Register** Citation].	
*	*	*	*	*
5–40–5270	Standard for Toxic Pollutants	07/30/2015	05/10/2017 [Insert **Federal Register** Citation].	
*	*	*	*	*

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	* * *	*	*	*
Documents Incorporated by Reference (9 VAC 5–20–21, Section B.).	Northern Virginia (Metropolitan Washington) Ozone Nonattainment Area, Fredericksburg Ozone Maintenance Area, Richmond-Petersburg Ozone Maintenance Area.	10/1/2015	05/10/2017 [Insert **Federal Register** Citation].	State effective date is 7/30/15.
*	* * *	*	*	*
Documents Incorporated by Reference (9 VAC 5–20–21, Section E.15.).	Northern Virginia (Metropolitan Washington) Ozone Nonattainment Area, Fredericksburg Ozone Maintenance Area, Richmond-Petersburg Ozone Maintenance Area.	10/1/2015	05/10/2017 [Insert **Federal Register** Citation].	State effective date is 7/30/15.
*	* * *	*	*	*

* * * * *

[FR Doc. 2017–09387 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0645; FRL–9962–11-Region 5]

Air Plan Approval; Indiana; Commissioner's Order for SABIC Innovative Plastics

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a revision to the Indiana State Implementation Plan (SIP), a submittal from the Indiana Department of Environmental Management (IDEM) to EPA, dated December 5, 2016. The submittal consists of an order issued by the Commissioner of IDEM that establishes permanent and enforceable sulfur dioxide (SO_2) emission limits for SABIC Innovative Plastics (SABIC). IDEM submitted this order so the area near SABIC can be designated ''attainment'' of the 2010 primary SO_2 National Ambient Air Quality Standards (NAAQS), a matter that will be addressed in a separate future rulemaking. EPA's approval of this this order would make these SO_2 emission limits and applicable reporting, recordkeeping, and compliance demonstration requirements part of the federally enforceable Indiana SIP.

DATES: This direct final rule is be effective July 10, 2017, unless EPA receives adverse comments by June 9, 2017. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA–R05–OAR–2016–0645 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7947, *ko.joseph@epa.gov.*

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

I. Why did IDEM issue this Commissioner's Order?
II. What are the SO_2 limits in this Commissioner's Order?
III. By what criterion is EPA reviewing this SIP revision?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Why did IDEM issue this Commissioner's Order?

On December 5, 2016, IDEM submitted for approval, as a revision to the Indiana SIP, an order issued by IDEM's Commissioner that establishes SO_2 emission limits for SABIC. SO_2 emission limits for SABIC previously did not exist in the Indiana SIP. IDEM established these emission limits so the area near SABIC can qualify in the future for being designated ''attainment'' of the 2010 primary SO_2 NAAQS. The history of the 2010 SO_2 NAAQS designation process and the applicable Data Requirements Rule (DRR) is explained below in order to provide a more detailed explanation of the context for IDEM's request.

On June 3, 2010, pursuant to section 109 of the Clean Air Act (CAA), EPA revised the primary (health-based) SO_2 NAAQS by establishing a new one-hour standard codified at title 40 Code of Federal Regulations (CFR) section 50.17 (75 FR 35520). Pursuant to section 107(d) of the CAA, EPA must designate areas as either ''unclassifiable,'' ''attainment,'' or ''nonattainment'' for the 2010 one-hour SO_2 primary NAAQS. Under Section 107(d) of the CAA, a nonattainment area is any area that does not meet the NAAQS or that contributes to a violation in a nearby area. An attainment area is any area, other than a nonattainment area, that meets the NAAQS. Unclassifiable areas are those that cannot be classified on the basis of

available information as meeting or not meeting the NAAQS.

On August 5, 2013, EPA published a final rule designating 29 areas in the United States as nonattainment for the 2010 SO_2 NAAQS, based on recorded air quality monitoring data from 2009–2011 that showed violations of the NAAQS (78 FR 47191). In that rulemaking, EPA committed to address, in separate future actions, the designations for all other areas for which EPA was not yet prepared to issue designations.

Following the initial August 5, 2013, designations, three lawsuits were filed against EPA in different U.S. District Courts, alleging that EPA had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country by June 2013, three years after the promulgation of the revised SO_2 NAAQS, as required by Section 107(d) of the CAA. In an effort intended to resolve the litigation in one of those cases, plaintiffs Sierra Club and the Natural Resources Defense Council and EPA filed a proposed consent decree with the U.S. District Court for the Northern District of California. On March 2, 2015, the Court entered the consent decree and issued an enforceable order for EPA to complete the area designations according to the Court-ordered schedule.[1] The consent decree required EPA to complete the designations in three additional rounds following EPA's original designations (Round 1): Round 2 by July 2, 2016, Round 3 by December 31, 2017, and Round 4 by December 31, 2020. This action falls within Round 3 of the designation process.

Under the DRR (80 FR 51052), each state air agency was required to submit a list to the EPA by January 15, 2016, that identified all sources within the state that had SO_2 emissions exceeding 2,000 tons per year (tpy) during the most recent year for which emissions data for those sources were available, plus any additional sources and their associated areas identified by the state air agency or by the EPA as also warranting air quality characterization due to their potential to contribute to an SO_2 NAAQS violation.

According to IDEM, SABIC emitted 4,030 tons of SO_2 in 2014, exceeding the 2,000 tpy threshold, and therefore Indiana identified SABIC as one of eleven facilities in the state as being subject to the air quality characterization requirements of the DRR. To satisfy the requirements of the DRR, states must characterize local SO_2 concentrations with either air dispersion modeling or ambient air monitoring. States also have the option to establish a permanent and federally enforceable facility-wide limit on SO_2 emissions from a listed source to below 2,000 tpy. On June 30, 2016, Indiana informed EPA that SABIC had selected the dispersion modeling option to characterize the local SO_2 concentrations in the area surrounding the facility. Indiana also wrote on September 26, 2016, to inform EPA that it planned to pursue federally enforceable limits for SABIC as a means to provide for attainment in the area.

Under the DRR, for sources such as SABIC that the state has elected to address through modeling, the state is required to submit modeling by January 13, 2016, characterizing nearby air quality. Under the DRR, Indiana may submit modeling showing that the applicable limits provide for attainment of the standard, but only if these limits are federally enforceable.

SABIC requested a Commissioner's Order from IDEM to be submitted to EPA so as to establish federally enforceable and permanent SO_2 emission limits that will ensure modeled attainment of the 2010 SO_2 NAAQS in accordance with EPA's *Draft SO_2 NAAQS Designations Modeling Technical Assistance Document.*[2] Therefore, IDEM conducted air dispersion modeling using the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) version 15181 in accordance with appendix W of 40 CFR part 51 to determine SO_2 emission limits for SABIC that should result in modeled attainment of the 2010 SO_2 NAAQS in the area near this facility.

IDEM has requested that EPA approve Commissioner's Order 2016–03 for SABIC as part of Indiana's SIP. If EPA approves the SO_2 emission limits contained in these orders, they would become federally enforceable. Once these SO_2 emission limits have become federally enforceable, IDEM intends to use them to demonstrate modeled attainment for the 2010 SO_2 NAAQS for the area near SABIC. To be clear, the purpose of this rulemaking is to take action on IDEM's request to approve these SO_2 emission limits into the Indiana SIP and thereby make them federally enforceable. The purpose of this rulemaking is *not* to take action on whether these SO_2 emission limits are adequate for EPA to designate attainment of the 2010 SO_2 NAAQS for the area near SABIC. EPA intends to complete 2010 SO_2 NAAQS designations for areas under the Federal consent decree deadlines, including the area near SABIC, in separate rulemakings.

II. What are the SO_2 limits in these Commissioner's Orders?

For SABIC, Indiana issued Commissioner's Order 2016–03 on October 20, 2016, with an effective date of January 13, 2017. This order established SO_2 emission limits for 20 emission units within the SABIC facility. According to IDEM, the COS Vent Oxidizer and the COS Flare units contribute the most to SO_2 ambient air concentrations in the area. Within the SABIC process line, the COS Vent Oxidizer is the primary control device, and the COS Flare serves as a back-up to the oxidizer or is used during safety interlock of the system. The function of both units is to eliminate the sulfur-containing compounds in the regeneration gas via thermal combustion. The order established the following emissions rates for the COS Vent Oxidizer and the COS Flare: (a) 415 lb/hr, one-hour average; and (b) 269.21 lb/hr, twenty-four hour rolling average, based on daily coke usage and daily sulfur input. The 18 other emission limits for ancillary units are minor contributors to the overall SO_2 ambient air concentrations in the area, and are listed in Table 1 below.

TABLE 1—EMISSION LIMITS FOR ANCILLARY UNITS

Unit name	Emission limit (lb/hr, one-hour average)
NE Boiler (01–101)	0.15
BW Gas (01–014)	0.15
H–790 (12–701)	0.02
H–520 (03–007)	0.0045
H–530A (03–008)	27.8
H–530B (03–008)	27.8
H–390 (12–169)	0.0102
H–900 (13–049)	1.86
H–900B (13–321)	0.0188
SC 1/2 (13–155)	0.0008
H–7090 (04–063)	0.00235
H–6060 (04–050)	0.00153
F–972 (08–001)	0.518
COGEN (19–001)	1.17
AUX BOILER (19–002)	0.15
AUX2 BOILER (19–003)	0.15
CG1 BOILER (19–004)	0.15
R BOILER (09–106)	0.11

III. By what criterion is EPA reviewing this SIP revision?

EPA has evaluated this revision on the basis of whether it strengthens Indiana's SIP. Prior to Commissioner's Order 2016–03, there were no specific

[1] *Sierra Club et al.* v. *EPA,* No. 3:13–cv–3953–SI (N.D.Cal.).

[2] *Draft SO_2 NAAQS Designations Modeling Technical Assistance Document.* December 2013. *http://www3.epa.gov/airquality/sulfurdioxide/pdfs/SO2ModelingTAD.pdf.*

SO_2 emission limitations in the SIP applicable to SABIC. The SO_2 emission limits contained in Commissioner's Order 2016–03 for SABIC establish permanent and enforceable limits, and should, therefore, strengthen Indiana's SIP.

The adequacy of these limits for providing for attainment is not a prerequisite for approval of these limits. Nevertheless, the purpose of these limits is ultimately to provide for attainment, and EPA is working with Indiana to assure a proper analysis of the adequacy of these limits for this purpose.

IV. What action is EPA taking?

EPA is approving Commissioner's Order 2016–03 as part of the Indiana SIP. The Commissioner's Order strengthens Indiana's SIP by incorporating SO_2 emission limits for SABIC, which did not have any specific SO_2 emission limits for SABIC previously. By approving the Commissioner's Order into the Indiana SIP, these SO_2 emission limits and applicable reporting, recordkeeping, and compliance demonstration requirements contained in the order would become federally enforceable, and strengthen the Indiana SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective July 10, 2017 without further notice unless we receive relevant adverse written comments by June 9, 2017. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective July 10, 2017.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Commissioner's Order described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[3] EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this

[3] 62 FR 27968 (May 22, 1997).

action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 20, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770 the table in paragraph (d) is amended by adding an entry for ''SABIC Innovative Plastics'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED INDIANA SOURCE-SPECIFIC PROVISIONS

CO date	Title	SIP rule	EPA approval	Explanation
*	*	*	*	*
10/20/2016	SABIC Innovative Plastics	N.A	5/10/2017, [Insert **Federal Register** citation].	Limitation intended to support attainment designation.
*	*	*	*	*

* * * * *

[FR Doc. 2017–09385 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0430; FRL–9961–89-Region 4]

Air Quality Plans; Tennessee; Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on December 16, 2015, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure SIP submission.'' TDEC certified that the Tennessee SIP contains provisions that ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in Tennessee. EPA is finalizing its determination that Tennessee's infrastructure SIP submission, provided to EPA on December 16, 2015, satisfies certain required infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: This rule will be effective June 9, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2014–0430. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bell can be reached via electronic mail at *bell.tiereny@epa.gov* or via telephone at (404) 562–9088.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On December 14, 2012, EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (μg/m³) to 12.0 μg/m³. *See* 78 FR 3086 (January 15, 2013). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.

In a proposed rulemaking published on January 9, 2017 (82 FR 2295), EPA proposed to approve portions of Tennessee's December 16, 2015, SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS. The details of Tennessee's

submission and the rationale for EPA's actions for this final rule are explained in the January 9, 2017 proposed rulemaking. Comments on the proposed rulemaking were due on or before February 8, 2017. EPA received no comments.

II. Final Action

EPA is taking final action to approve Tennessee's infrastructure submissions submitted on December 16, 2015, for the 2012 Annual $PM_{2.5}$ NAAQS for the infrastructure SIP requirements, with the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (I) (prongs 1, 2 and 4). EPA notes that the Agency is not approving any specific rule, but rather approving that Tennessee's already approved SIP meets certain CAA requirements. With respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (I) (prongs 1, 2 and 4), EPA will consider these requirements in relation to Tennessee's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking. EPA is taking final action to approve all other elements of Tennessee's infrastructure SIP submissions for the 2012 Annual $PM_{2.5}$ NAAQS because the submission is consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 17, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220(e), is amended by adding entry ''110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* *	*	*	*	* *
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS.	Tennessee ..	11/19/2015	5/10/2017, [Insert citation of publication].	With the exception of interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2 and 4).

[FR Doc. 2017–09390 Filed 5–9–17; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0707; FRL–9962–09-Region 5]

Air Plan Approval; Indiana; Commissioner's Order for Carmeuse Lime, Inc.

AGENCY: Environmental Protection Agency (EPA).
ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a revision to the Indiana State Implementation Plan (SIP), a submittal from the Indiana Department of Environmental Management (IDEM) to EPA, dated December 22, 2016. The submittal consists of an order issued by the Commissioner of IDEM that establishes permanent and enforceable sulfur dioxide (SO_2) emission limits for Carmeuse Lime, Inc. (Carmeuse), applicable to its Gary, Indiana lime manufacturing plant. IDEM submitted this order so the area near Carmeuse can be designated ''attainment'' of the 2010 primary SO_2 National Ambient Air Quality Standards (NAAQS), a matter that will be addressed in a separate future rulemaking. EPA's approval of this order would make these SO_2 emission limits and applicable reporting, recordkeeping, and compliance demonstration requirements part of the federally enforceable Indiana SIP.

DATES: This direct final rule will be effective July 10, 2017, unless EPA receives adverse comments by June 9, 2017. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA–R05–OAR–2016–0707 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7947, *ko.joseph@epa.gov.*

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

I. Why did IDEM issue this commissioner's order?
II. What are the SO_2 limits in this commissioner's order?
III. By what criterion is EPA reviewing this SIP revision?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Why did IDEM issue this commissioner's orders?

On December 22, 2016, IDEM submitted for approval, as a revision to the Indiana SIP, an order issued by IDEM's Commissioner that establishes SO_2 emission limits for Carmeuse. SO_2 emission limits for Carmeuse previously did not exist in the Indiana SIP. IDEM established these emission limits so the area near Carmeuse can qualify in the future for being designated ''attainment'' of the 2010 primary SO_2 NAAQS. The history of the 2010 SO_2 NAAQS and the applicable Data Requirements Rule (DRR) is explained below in order to provide a more detailed explanation of the context for IDEM's request.

On June 3, 2010, pursuant to section 109 of the Clean Air Act (CAA), EPA revised the primary (health-based) SO_2 NAAQS by establishing a new one-hour standard codified at title 40 Code of Federal Regulations (CFR) section 51.17 (75 FR 35520). Pursuant to section 107(d) of the CAA, EPA must designate areas as either ''unclassifiable,'' ''attainment,'' or ''nonattainment'' for the 2010 one-hour SO_2 primary NAAQS. Under Section 107(d) of the CAA, a nonattainment area is any area that does not meet the NAAQS or that contributes to a violation in a nearby area. An attainment area is any area, other than a nonattainment area, that meets the NAAQS. Unclassifiable areas are those that cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

On August 5, 2013, EPA published a final rule designating 29 areas in the United States as nonattainment for the 2010 SO_2 NAAQS, based on recorded air quality monitoring data from 2009–2011 that showed violations of the NAAQS (78 FR 47191). In that rulemaking, EPA committed to address, in separate future actions, the designations for all other areas for which EPA was not yet prepared to issue designations.

Following the initial August 5, 2013, designations, three lawsuits were filed against EPA in different U.S. District Courts, alleging that EPA had failed to perform a nondiscretionary duty under

the CAA by not designating all portions of the country by June 2013, three years after the promulgation of the revised SO_2 NAAQS, as required by Section 107(d) of the CAA. In an effort intended to resolve the litigation in one of those cases, plaintiffs Sierra Club and the Natural Resources Defense Council and EPA filed a proposed consent decree with the U.S. District Court for the Northern District of California. On March 2, 2015, the Court entered the consent decree and issued an enforceable order for EPA to complete the area designations according to the Court-ordered schedule.[1] The consent decree required EPA to complete the designations in three additional rounds following EPA's original designations (Round 1): Round 2 by July 2, 2016, Round 3 by December 31, 2017, and Round 4 by December 31, 2020. This action falls within Round 3 of the designation process.

Under the DRR (80 FR 51052), each state air agency was required to submit a list to the EPA by January 15, 2016, that identified all sources within the state that had SO_2 emissions exceeding 2,000 tons per year (tpy) during the most recent year for which emissions data for those sources were available, plus any additional sources and their associated areas identified by the air agency or by the EPA as also warranting air quality characterization due to their potential to contribute to an SO_2 NAAQS violation.

Carmeuse's lime manufacturing plant was not identified by IDEM as one of the sources covered by the DRR since the SO_2 emissions from the facility did not exceed 2,000 tpy; but IDEM determined that emissions from the plant could adversely impact overall SO_2 air quality for Lake County. Based on modeling conducted by Indiana in accordance with EPA's *Draft SO_2 NAAQS Designations Modeling Technical Assistance Document,*[2] these emission limits in the Commissioner's Order will ensure modeled attainment of the 2010 SO_2 NAAQS. IDEM conducted air dispersion modeling using the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) version 15181 in accordance with appendix W of 40 CFR part 51 to determine SO_2 emission limits for Carmeuse that will ensure modeled attainment of the 2010 SO_2 NAAQS in the area near this facility.

IDEM has requested that EPA approve Commissioner's Order 2016–04 for Carmeuse as part of the Indiana's SIP. If EPA approves the SO_2 emission limits contained in these orders, they will become federally enforceable. Once these SO_2 emission limits have become federally enforceable, IDEM intends to use them to demonstrate modeled attainment for the 2010 SO_2 NAAQS for the area near Carmeuse. To be clear, the purpose of this rulemaking is to take action on IDEM's request to approve these SO_2 emission limits into the Indiana SIP and thereby make them federally enforceable. The purpose of this rulemaking is *not* to take action on whether these SO_2 emission limits are adequate for EPA to designate attainment of the 2010 SO_2 NAAQS for the area near Carmeuse. EPA intends to complete 2010 SO_2 NAAQS designations for areas under the Federal consent decree deadlines, including the area near Carmeuse, in separate rulemakings.

II. What are the SO_2 limits in this commissioner's orders?

Indiana issued Commissioner's Order 2016–04 on November 15, 2016, with an effective date of 18 days after issuance. This order established SO_2 emission limits for five kilns (with six stacks per kiln) at the Carmeuse facility. Modeling for the Commissioner's Order showed that an emission limit of 12.0 pounds per hour of SO_2 for each kiln, or 2.0 pounds per hour for each stack, would ensure attainment of the 2010 SO_2 NAAQS. Indiana calculated a rolling 720-operating-hour average limit of 9.48 pounds per hour for each kiln, based on a flat averaging ratio of 0.79 recommended in EPA's *Guidance for 1-hour SO_2 Nonattainment Area SIP Submission.* This limit has a comparable stringency to an hourly emission limit. The Commissioner's Order requires that Carmeuse comply with this rolling 720-operating-hour average limit of 9.48 pound per hour per kiln, beginning seven days from the issuance of the permit modification required to allow the use of natural gas within the affected kilns.

III. By what criterion is EPA reviewing this SIP revision?

EPA has evaluated this revision on the basis of whether it strengthens Indiana's SIP. Prior to Commissioner's Order 2016–04, there were no specific SO_2 emission limitations in the SIP applicable to Carmeuse, nor were there any applicable SO_2 limits identified in its part 70 Operating Permit. The SO_2 emission limits in Commissioner's Order 2016–04 for Carmeuse establish permanent and federally enforceable limits, and should, therefore, strengthen Indiana's SIP.

The adequacy of these limits for providing for attainment is not a prerequisite for approval of these limits. Nevertheless, the purpose of these limits is ultimately to provide for attainment, and EPA is working with Indiana to assure a proper analysis of the adequacy of these limits for this purpose.

IV. What action is EPA taking?

EPA is approving Commissioner's Order 2016–04 as part of the Indiana SIP. Incorporating the order's SO_2 emission limits and related requirements for Carmeuse as part of the SIP strengthens Indiana's SIP, which did not have any specific SO_2 emission limits for Carmeuse previously. By approving the Commissioner's Order into the Indiana SIP, these SO_2 emission limits and applicable reporting, recordkeeping, and compliance demonstration requirements contained in the order would become federally enforceable, and strengthen the Indiana SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective July 10, 2017 without further notice unless we receive relevant adverse written comments by June 9, 2017. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective July 10, 2017.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes

[1] *Sierra Club et al.* v. *EPA,* No. 3:13–cv–3953–SI (N.D.Cal.)

[2] *Draft SO_2 NAAQS Designations Modeling Technical Assistance Document.* December 2013. *http://www3.epa.gov/airquality/sulfurdioxide/pdfs/SO2ModelingTAD.pdf.*

incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Commissioner's Order described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[3] EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and/or at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 27, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770 the table in paragraph (d) is amended by adding a new entry for ''Carmeuse Lime Inc.'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED INDIANA SOURCE-SPECIFIC PROVISIONS

CO date	Title	SIP rule	EPA approval	Explanation
*	*	*	*	*
11/16/2016	Carmeuse Lime Inc	N.A	5/10/2017, [Insert **Federal Register** citation].	Limitation intended to support attainment designation.

[3] 62 FR 27968 (May 22, 1997).

EPA-APPROVED INDIANA SOURCE-SPECIFIC PROVISIONS—Continued

CO date	Title	SIP rule	EPA approval	Explanation
*	*	*	*	*

* * * * *

[FR Doc. 2017–09382 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–HQ–OAR–2016–0515; FRL–9962–25–OAR]

RIN 2060–AT24

Determinations of Attainment by the Attainment Date, Determinations of Failure To Attain by the Attainment Date and Reclassification for Certain Nonattainment Areas for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making final determinations of attainment by the attainment date and determinations of failure to attain by the attainment date for ten nonattainment areas currently classified as ''Moderate'' for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Specifically, the EPA is determining that seven areas attained the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2015, based on complete, quality-assured and certified $PM_{2.5}$ monitoring data for 2013 to 2015. The EPA is also determining that three areas failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2015. Upon the effective date of such determinations of failure to attain the NAAQS, these three areas will be reclassified as ''Serious'' for the 2006 24-hour $PM_{2.5}$ NAAQS by operation of law. States with jurisdiction over these nonattainment areas reclassified to Serious are required to submit State Implementation Plan (SIP) revisions that comply with the statutory and regulatory requirements for 2006 24-hour $PM_{2.5}$ NAAQS nonattainment areas classified as Serious. In this action, the EPA is not making any final determination regarding its proposed determination for the Logan, Utah-Idaho, nonattainment area.

DATES: This rule is effective June 9, 2017.

ADDRESSES: The EPA has established a docket, identified by Docket ID No. EPA–HQ–OAR–2016–0515, that can be found online at *https://www.regulations.gov.* Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information or other information disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Leigh Herrington, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–0882; fax number: (919) 541–5315; email address: *herrington.leigh@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this action include six states with one or more areas designated nonattainment and classified as ''Moderate'' for the 2006 24-hour $PM_{2.5}$ NAAQS. Entities potentially affected indirectly by this action include owners or operators of sources of emissions of direct $PM_{2.5}$ or $PM_{2.5}$ precursors (ammonia, nitrogen oxides, sulfur dioxide and volatile organic compounds) that contribute to $PM_{2.5}$ levels within the designated nonattainment areas the EPA is addressing in this action.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be posted at *https://www.epa.gov/pm-pollution/particulate-matter-pm-implementation-regulatory-actions.*

C. How is this document organized?

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document and other related information?
- C. How is this document organized?

II. Proposed Actions

III. Final Actions
- A. Determinations of Attainment by the Attainment Date
- B. Determinations of Failure To Attain by the Attainment Date and Reclassification to Serious
- C. Public Comments

IV. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)
- L. Judicial Review

II. Proposed Actions

On December 16, 2016 (81 FR 91088), the EPA proposed to find that seven nonattainment areas classified as Moderate attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015, based on complete, quality-assured and certified $PM_{2.5}$ monitoring data for the 3-year period of 2013 to 2015.[1] The seven designated nonattainment areas are: (1) Chico, California; (2) Imperial County, California; (3) Knoxville-Sevierville-La Follette, Tennessee; (4) Liberty-Clairton, Pennsylvania; (5) Nogales, Arizona; (6) Sacramento, California; and, (7) San Francisco Bay Area, California.[2]

[1] An area's design value for the 24-hour $PM_{2.5}$ NAAQS is the highest of the 3-year average of annual 98th percentile 24-hour average $PM_{2.5}$ mass concentration values recorded at any eligible monitoring site (40 CFR part 50, Appendix N, 1.0(c)(2)).

[2] Note that there are three 2006 $PM_{2.5}$ NAAQS Moderate nonattainment areas not addressed in that proposal or this final action: (1) Klamath Falls, OR; (2) Oakridge, OR; and (3) West Central Pinal, AZ. For the Klamath Falls, OR, nonattainment area, the EPA issued a determination of attainment by the attainment date of December 31, 2014, on June 6,

Continued

The EPA also proposed to find that four nonattainment areas classified as Moderate failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2015: (1) Fairbanks, Alaska; (2) Logan, Utah-Idaho; (3) Provo, Utah; and (4) Salt Lake City, Utah. The proposal stated that, as required by Clean Air Act (CAA) section 188(b)(2), upon finalization of the EPA's determinations that these four areas failed to attain, the areas would be reclassified to Serious by operation of law and would be subject to all applicable Serious area attainment planning and nonattainment New Source Review (NNSR) requirements. In the December 2016 proposal, the EPA also discussed its determination that the Logan, Utah-Idaho, multistate nonattainment area did not qualify for a 1-year attainment date extension, despite the state of Idaho's request for such an extension, due to a lack of valid air quality data for calendar year 2015.

The proposal also explained that under CAA section 188(b)(2) and the EPA's final rule, titled, ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' (81 FR 58010, August 24, 2016) (hereinafter ''$PM_{2.5}$ SIP Requirements Rule''), a state is required to make a SIP submission to address the statutory and regulatory requirements for any area that has been reclassified to Serious under CAA section 188(b)(2) within 18 months from the effective date of reclassification, or 2 years before the attainment date, whichever is earlier. *See* 40 CFR 51.1003(b)(2)(ii). Thus, Serious area attainment plan submissions for the areas reclassified in this action will be due by December 31, 2017, and consistent with CAA section 188(c)(2), the affected states will be required to demonstrate that the area will attain the standard as expeditiously as practicable, but no later than December 31, 2019 (the end of the tenth calendar year following the effective date of designation of the area). The EPA notes that states with areas reclassified to Serious may also elect to seek an extension of the applicable attainment date pursuant to CAA section 188(e), if they meet the applicable criteria.

III. Final Actions

A. Determinations of Attainment by the Attainment Date

For this rulemaking, the EPA evaluated data from air quality monitors in 10 nonattainment areas classified as Moderate for the 2006 24-hour $PM_{2.5}$ NAAQS in order to determine the attainment status of each area as of the December 31, 2015, attainment date. Each of the seven nonattainment areas for which the EPA proposed determinations of attainment by the attainment date, listed in Table 1, had valid monitoring data and a design value equal to or less than 35 micrograms per cubic meter ($\mu g/m^3$) based on the 2013 to 2015 monitoring period. The EPA received no adverse comments on these proposed determinations of attainment. Therefore, pursuant to CAA section 188(b)(2) of the CAA, the agency is making final determinations that these seven nonattainment areas attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. The EPA's determinations are based upon 3 years of complete, quality-assured and certified data for calendar years 2013 to 2015. The monitoring data for the 3 years (2013 to 2015) used to calculate each monitor's design value are provided in a technical support document (TSD) in the docket for this action.[3]

Once effective, this action satisfies the EPA's obligation pursuant to CAA section 188(b)(2) to determine whether these seven areas attained the standard by the applicable attainment date. These determinations of attainment do not constitute a redesignation to attainment. Rather, redesignations require states to meet a number of additional statutory criteria in CAA section 107(d)(3), including EPA approval of a state plan demonstrating maintenance of the air quality standard for 10 years after redesignation.

B. Determinations of Failure To Attain by the Attainment Date and Reclassification to Serious

In its December 2016 proposal, the EPA proposed to determine that four nonattainment areas (Fairbanks, Alaska; Logan, Utah-Idaho; Provo, Utah; and Salt Lake City, Utah) failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015, because the 2013 to 2015 design value for at least one monitor in each area exceeded the 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$. The TSD provided in the docket shows the quality-assured monitoring data for the relevant years for each of these nonattainment areas, as well as the 3-year design value calculations for each area.

Pursuant to CAA section 188(b)(2), the EPA is finalizing the proposed determinations that three areas (Fairbanks, Alaska; Provo, Utah; and Salt Lake City, Utah) failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable December 31, 2015, attainment date.[4] Therefore, upon the effective date of this rule, these three Moderate nonattainment areas will be reclassified by operation of law to Serious for the 2006 $PM_{2.5}$ standards. A Serious $PM_{2.5}$ nonattainment area is required to attain the standard as expeditiously as practicable, but no later than by the end of the tenth year after designation (December 31, 2019).

Table 1 provides a summary of the determinations of attainment and determinations of failure to attain (reclassifications) being finalized in this action.

TABLE 1—SUMMARY OF DETERMINATIONS OF ATTAINMENT BY THE ATTAINMENT DATE/RECLASSIFICATIONS FOR CERTAIN MODERATE NONATTAINMENT AREAS FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS

2006 24-hour $PM_{2.5}$ NAAQS nonattainment area	2013–2015 Design value ($\mu g/m^3$)	Final action
Chico, CA	29	Determination of attainment.

2016 (81 FR 36176). For the Oakridge, OR, nonattainment area, the EPA issued a 1-year attainment date extension from December 31, 2015, to December 31, 2016, on July 18, 2016 (81 FR 46612). For the West Central Pinal, AZ, nonattainment area, the EPA designated the area as nonattainment on February 3, 2011 (76 FR 6056), and therefore will make a determination about whether or not the area has attained the 2006 $PM_{2.5}$ NAAQS after the attainment date of December 31, 2017.

[3] *See,* ''Technical Support Document Regarding $PM_{2.5}$ Monitoring Data—Determinations of Attainment by the Attainment Date, Determinations of Failure to Attain by the Attainment Date and Reclassification for Certain Nonattainment Areas for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards,'' dated April 19, 2017, within this action's docket.

[4] Since the issuance of the December 2016 proposed action, the state of Utah has provided additional information for the monitoring sites in the Logan, Utah-Idaho, area. The EPA needs additional time to consider this information, and, therefore, is not taking final action for the Logan, Utah-Idaho, area in this notice. The EPA intends to act separately on the Logan, Utah-Idaho, area.

TABLE 1—SUMMARY OF DETERMINATIONS OF ATTAINMENT BY THE ATTAINMENT DATE/RECLASSIFICATIONS FOR CERTAIN MODERATE NONATTAINMENT AREAS FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS—Continued

2006 24-hour $PM_{2.5}$ NAAQS nonattainment area	2013–2015 Design value (μg/m³)	Final action
Fairbanks, AK	124	Failed to attain; reclassification to Serious.
Imperial County, CA	33	Determination of attainment.
Knoxville-Sevierville-La Follette, TN	20	Determination of attainment.
Liberty-Clairton, PA	33	Determination of attainment.
Nogales, AZ	28	Determination of attainment.
Provo, UT	* 50	Failed to attain; reclassification to Serious.
Sacramento, CA	35	Determination of attainment.
Salt Lake City, UT	* 45	Failed to attain; reclassification to Serious.
San Francisco Bay Area, CA	30	Determination of attainment.

* *See* April 19, 2017, memorandum titled, *Salt Lake and Provo, Utah $PM_{2.5}$ 2013–2015 24-hour Design Value,* from Gail Fallon, U.S. EPA, Region 8, to the File.

C. Public Comments

The public comment period for the EPA's December 16, 2016, proposal closed on January 17, 2017. To review the comments received on the proposed rule and the Response to Comment document that accompanies this final rule, please go to *https://www.regulations.gov* and search for Docket ID No. EPA–HQ–OAR–2016–0515. A majority of commenters supported the EPA's proposal to determine that certain nonattainment areas did not attain the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date and thus the reclassification of the areas to Serious. The EPA received comments expressing concerns about proposed determinations for the Logan, Utah-Idaho, and Fairbanks, Alaska, nonattainment areas, which are addressed here.

Comment: Idaho Department of Environmental Quality (DEQ) opposed the EPA's determination not to grant the 1-year extension and subsequent determination that the Logan, Utah-Idaho, nonattainment area failed to attain by the December 31, 2015, attainment date. Idaho DEQ asserted that the area met the requirements under CAA section 188(d) and the $PM_{2.5}$ SIP Requirements Rule relevant to extensions of the Moderate area attainment date (*i.e.,* that the area has complied with all requirements and commitments pertaining to the area in the applicable implementation plans and monitoring data show that the 2015 98th percentile are below the $PM_{2.5}$ NAAQS for the Franklin County monitor on the Idaho side of the nonattainment area). Idaho DEQ acknowledged that data were incomplete and requested that the EPA determine the area's 2015 98th percentile data using the same data that the EPA used to determine the area's 2013 to 2015 design value.

Response: The EPA is considering these comments and is not taking final action on the Logan, Utah-Idaho, nonattainment area at this time.

Comment: Three commenters did not question the EPA's proposed determination that the Fairbanks, Alaska, area failed to attain the 2006 24-hour NAAQS by December 31, 2015, but asserted that the Serious area attainment plan for the Fairbanks, Alaska, 2006 24-hour $PM_{2.5}$ NAAQS nonattainment area should be due 18 months after the effective date of the Serious area reclassification rather than December 31, 2017. The commenters stated that, under CAA section 189(b)(2), states have 18 months from the effective date of a reclassification to complete plans and that the change in the submission deadline was not proposed during the EPA's rulemaking to promulgate the $PM_{2.5}$ SIP Requirements Rule. Commenters pointed to ''two alternative schedules'' for SIP submissions in response to mandatory and discretionary reclassifications to Serious, and allege the EPA's $PM_{2.5}$ SIP Requirements Rule is ''in error by adding the clause that reflects the discretionary reclassification language and mandatory language together.'' The Alaska Department of Environmental Conservation also claimed that requiring the state to submit the Serious area attainment plan by December 31, 2017, would result in insufficient time to prepare and adopt a very complex plan with adequate public process and public participation.

Response: The EPA acknowledges that meeting the Serious area attainment plan submission deadline may be challenging for those areas reclassified from Moderate to Serious in this final action, and understands the desire for additional time. Because the submission due date was established in the final $PM_{2.5}$ SIP Requirements Rule and the EPA did not propose any changes to this date in its December 2016 proposal, we cannot make changes to this date here. In that prior rulemaking, the EPA addressed the issue of when states must submit Serious area attainment plans when they are reclassified, in order to comport with statutory requirements for the attainment date for such nonattainment areas. Accordingly, EPA promulgated 40 CFR 51.1003(b)(2)(ii), which provides that in the event of a mandatory reclassification from Moderate to Serious upon a determination that an area fails to attain, the state is required to submit the Serious area attainment plan ''within 18 months from the effective date of reclassification, or 2 years before the attainment date, whichever is earlier.'' [5] The EPA did not reopen the issue of the attainment plan submission date in this action regarding determinations of attainment, and merely noted the submission date for informational purposes. Even though the comment on

[5] In the $PM_{2.5}$ SIP Requirements Rule, the EPA provided its reasoning for establishing the submission date contained in 40 CFR 51.1003(b)(2)(ii). *See generally* 81 FR 58074–58078 (comprehensive discussion of the rationale behind plan due dates for areas subject to either a discretionary or a mandatory reclassification to Serious); Response to Comments, pages 134–138, *available at https://www.regulations.gov* under docket item EPA–HQ–OAR–2013–0691–0145. As EPA explained, ''a minimum of 2 years is appropriate because (1) it provides time for emission reduction measures adopted by the state to take effect and improve air quality; (2) it will allow the agency sufficient time to evaluate and act on the Serious area attainment demonstration; and (3) for every other NAAQS, the CAA SIP submission dates are generally 2 years or more prior to the attainment date.'' 81 FR 58077. The EPA even included a discussion of what would arise if the deadline were similar to that the commenters are advocating, explaining that ''[if] the plan is not submitted until just before year 10, and the agency determines the plan will not lead to attainment, there will be no time to take corrective action before the attainment date to ensure attainment of the NAAQS.'' *Id.*

the SIP submission due date is out of scope for this rulemaking action, the EPA understands the significant effort involved in preparing an attainment plan revision and stands ready to help the state prepare this plan.

The EPA understands that in this particular instance, the submission date for the Serious area attainment plan may be challenging in light of the complexity of the air quality situation in the Fairbanks, Alaska, nonattainment area and the need for public process in adopting plans. The EPA will prioritize working with Alaska to help the state prepare the required Serious area attainment plan as expeditiously and efficiently as possible. The EPA also believes that in light of the December 2015 Moderate area plan developed by the state demonstrating it was impracticable to attain by the Moderate area attainment date of December 31, 2015, and the work already done by the state on the Serious area plan in anticipation of this determination of failure to attain, a Serious area plan can be submitted in a timely manner.

IV. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget (OMB) because it will satisfy the CAA obligation to make determinations of attainment based on an area's air quality as of the attainment date.

B. Paperwork Reduction Act (PRA)

This rule does not impose any additional information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* This action to find that three Moderate $PM_{2.5}$ nonattainment areas listed in Table 1 have failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by their attainment date and to reclassify those areas as Serious $PM_{2.5}$ nonattainment areas does not establish any new information collection burden not already covered under OMB control number 2060–0611.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Determinations that certain areas attained the 2006 24-hour $PM_{2.5}$ NAAQS do not create any new requirements. Determinations that certain nonattainment areas failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by their attainment date and the resulting reclassification of these areas by operation of law under CAA section 188(b)(2) similarly do not in and of themselves create any new requirements. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The EPA believes, as discussed previously in this document, that a determination of nonattainment is a factual determination based upon air quality considerations, and the resulting reclassification of an area and the associated required revisions to SIPs must occur by operation of law. Thus, this action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Pursuant to the CAA, this action determines whether the 2006 24-hour $PM_{2.5}$ nonattainment areas listed in Table 1 attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date, and reclassifies as ''Serious,'' by operation of law, the areas that did not do so.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal areas are located in the three areas that failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date. The CAA and the Tribal Authority Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe any environmental health or safety risks addressed by this action present a disproportionate risk to children. This action determines that three 2006 24-hour $PM_{2.5}$ nonattainment areas, identified in Table 1, did not attain the 2006 24-hour $PM_{2.5}$ standard by their applicable attainment date and thus these areas will be reclassified by operation of law as Serious $PM_{2.5}$ nonattainment areas.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. This action merely determines that three 2006 24-hour $PM_{2.5}$ nonattainment areas, identified in Table 1, did not attain the 2006 24-hour $PM_{2.5}$ standard by their applicable attainment date and thus these areas will be reclassified by operation of law as Serious $PM_{2.5}$ nonattainment areas.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action merely determines that three 2006 24-hour $PM_{2.5}$ nonattainment areas, identified in Table 1, did not attain by the applicable attainment date and thus these nonattainment areas will be reclassified by operation of law as Serious $PM_{2.5}$ nonattainment areas. Reclassifying the three nonattainment areas from Moderate to Serious will help protect all of those residing, working, attending school, or otherwise present in those areas regardless of minority or economic status.

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability that names specific entities where this rule makes factual determinations and does not directly regulate any entities. The determinations of attainment and failure to attain the 2006 24-hour $PM_{2.5}$ NAAQS (and resulting reclassifications) contained in this final rule do not in and of themselves create any new

requirements beyond what is already mandated by the CAA.

L. Judicial Review

Under CAA section 307(b)(1) of the CAA, petitions for judicial review of final actions that are locally and regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. However, the statute also provides that notwithstanding that general rule, ''a petition for review of any action . . . may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such determination.'' 42 U.S.C. 7607(b)(1). *See also Dalton Trucking* v. *EPA,* 808 F.3d 875 (D.C. Circuit 2015). Because this final action makes findings with regard to nonattainment areas across the country and interprets the CAA and applies such interpretations to states and nonattainment areas across the country, the Administrator finds that this action has nationwide scope and effect. Therefore, in accordance with CAA section 307(b)(1), petitions for review of this final action may be filed only in the United States Court of Appeals for the District of Columbia Circuit by July 10, 2017. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings for enforcement.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Fine particulate matter, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Ammonia, Fine particulate matter, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxides, Volatile organic compounds.

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

Dated: April 28, 2017.

E. Scott Pruitt,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Section 52.131 is amended by adding paragraph (c) to read as follows:

§ 52.131 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(c) *Determination of attainment.* Effective June 9, 2017, the EPA has determined that, based on 2013 to 2015 ambient air quality data, the Nogales, AZ $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 188(b)(2) to determine whether the area attained the standard. The EPA also has determined that the Nogales, AZ nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 188(b)(2).

Subpart F—California

■ 3. Section 52.247 is amended by adding paragraphs (j), (k), (l), and (m) to read as follows:

§ 52.247 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(j) *Determination of attainment.* Effective June 9, 2017, the EPA has determined that, based on 2013 to 2015 ambient air quality data, the Chico, CA $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 188(b)(2) to determine whether the area attained the standard. The EPA also has determined that the Chico, CA nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 188(b)(2).

(k) *Determination of attainment.* Effective June 9, 2017, the EPA has determined that, based on 2013 to 2015 ambient air quality data, the Imperial County, CA $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 188(b)(2) to determine whether the area attained the standard. The EPA also has determined that the Imperial County, CA nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 188(b)(2).

(l) *Determination of attainment.* Effective June 9, 2017, the EPA has determined that, based on 2013 to 2015 ambient air quality data, the Sacramento, CA $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 188(b)(2) to determine whether the area attained the standard. The EPA also has determined that the Sacramento, CA nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 188(b)(2).

(m) *Determination of attainment.* Effective June 9, 2017, the EPA has determined that, based on 2013 to 2015 ambient air quality data, the San Francisco Bay, CA $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 188(b)(2) to determine whether the area attained the standard. The EPA also has determined that the San Francisco Bay, CA nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 188(b)(2).

Subpart NN—Pennsylvania

■ 4. Section 52.2059 is amended by adding paragraph (v) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(v) *Determination of attainment.* Effective June 9, 2017, the EPA has determined that, based on 2013 to 2015 ambient air quality data, the Liberty-Clairton, PA $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 188(b)(2) to determine whether the area attained the standard. The EPA also has determined that the Liberty-Clairton, PA nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 188(b)(2).

Subpart RR—Tennessee

■ 5. Section 52.2231 is amended by adding paragraph (f) to read as follows:

§ 52.2231 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(f) *Determination of attainment.* Effective June 9, 2017, the EPA has determined that, based on 2013 to 2015 ambient air quality data, the Knoxville-Sevierville-La Follette, Tennessee $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015. Therefore, the EPA has met the requirement pursuant to CAA section 188(b)(2) to determine whether the area attained the standard. The EPA also has determined that the Knoxville-Sevierville-La Follette, Tennessee nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 188(b)(2).

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 7. Section 81.302 is amended in the table ''Alaska—2006 24-Hour $PM_{2.5}$ NAAQS (Primary and secondary)'' by revising the entries for ''Fairbanks, AK'' to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
Fairbanks, AK:				
AQCR 09 Northern Alaska Intrastate:				
Fairbanks North Star Borough (part)		Nonattainment	6/9/17	Serious.
The following townships and ranges: —MTRS F001N001—All Sections; —MTRS F001N001E—Sections 2–11, 14–23, 26–34; —MTRS F001N002—Sections 1–5, 8–17, 20–29, 32–36; —MTRS F001S001E—Sections 1, 3–30, 32–36; —MTRS F001S001W—Sections 1–30; —MTRS F001S002E—Sections 6–8, 17–20, 29–36; —MTRS F001S002W—Sections 1–5, 8–17, 20–29, 32–33; —MTRS F001S003E—Sections 31–32; —MTRS F002N001E—Sections 31–35; —MTRS F002N001—Sections 28, 31–36; —MTRS F002N002—Sections 32–33, 36; —MTRS F002S001E—Sections 1–2; —MTRS F002S002E—Sections 1–17, 21–24; —MTRS F002S003E—Sections 5–8, 18.				
* * * *		*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

■ 8. Section 81.345 is amended in the table ''Utah—2006 24-Hour $PM_{2.5}$ NAAQS (Primary and secondary)'' by revising the entries for ''Provo, UT'' and ''Salt Lake City, UT'' to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
* * * *		*	*	*
Provo, UT:				
Utah County (part)		Nonattainment	6/9/17	Serious.
The area of Utah County that lies west of the Wasatch Mountain Range (and this includes the Cities of Provo and Orem) with an eastern boundary for Utah County to be defined as the following Townships: Township 3 South Range 1 East; Township 4 South Range 2 East; Township 5 South Range 3 East; Township 6 South Range 3 East; Township 7 South Range 3 East; Township 8 South Range 3 East; Township 9 South Range 3 East; Township 10 South Range 2 East.				
Salt Lake City, UT:				
Box Elder County (part)		Nonattainment	6/9/17	Serious.

UTAH—2006 24-HOUR $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
The following Townships or portions thereof as noted (including Brigham City): Township 7 North Range 2 West; Township 8 North Range 2 West; Township 9 North Range 2 West; Township 10 North Range 2 West; Township 11 North Range 2 West; Township 12 North Range 2 West; Township 13 North Range 2 West; Township 9 North Range 3 West; Township 10 North Range 3 West; Township 11 North Range 3 West; Township 12 North Range 3 West; Township 13 North Range 3 West; Township 13 North Range 4 West; Township 12 North Range 4 West; Township 11 North Range 4 West; Township 10 North Range 4 West; Township 9 North Range 4 West; Township 13 North Range 5 West; Township 12 North Range 5 West; Township 11 North Range 5 West; Township 10 North Range 5 West; Township 9 North Range 5 West; Township 13 North Range 6 West; Township 12 North Range 6 West; Township 11 North Range 6 West; Township 10 North Range 6 West; Township 9 North Range 6 West; Township 7 North Range 1 West (portion located in Box Elder County); Township 8 North Range 1 West (portion located in Box Elder County); Township 9 North Range 1 West (portion located in Box Elder County).				
Davis County		Nonattainment	6/9/17	Serious.
Salt Lake County		Nonattainment	6/9/17	Serious.
Tooele County (part)		Nonattainment	6/9/17	Serious.
The following Townships or portions thereof as noted (including Tooele City): Township 1 South Range 3 West; Township 2 South Range 3 West; Township 3 South Range 3 West; Township 3 South Range 4 West; Township 2 South Range 4 West; Township 2 South Range 5 West; Township 3 South Range 5 West; Township 3 South Range 6 West; Township 2 South Range 6 West; Township 1 South Range 6 West; Township 1 South Range 5 West; Township 1 South Range 4 West; Township 1 South Range 7 West; Township 2 South Range 7 West; Township 3 South Range 7 West; all Sections within Township 4 South Range 7 West except for Sections 29, 30, 31 and 32; Township 4 South Range 6 West; Township 4 South Range 5 West; Township 4 South Range 4 West; Township 4 South Range 3 West.				
Weber County (part)		Nonattainment	6/9/17	Serious.
The area of Weber County that lies west of the Wasatch Mountain Range with an eastern boundary for Weber County to be defined as the following Townships (or portion thereof) extending to the western boundary of Weber County: Township 5 North Range 1 West; Township 6 North Range 1 West; all Sections within Township 7 North Range 1 West located within Weber County except for Sections 1, 2, 3, 4, 11, 12, 13 and 24; Township 7 North Range 2 West (portion located in Weber County).				
* * * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2017–09391 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Tolerances and Exemptions for Pesticide Chemical Residues in Food

CFR Correction

■ In Title 40 of the Code of Federal Regulations, parts 150 to 189, revised as of July 1, 2016, on page 612, in § 180.495, in the table in paragraph (a), the second entry for ''Grape, raisin'' is removed.

[FR Doc. 2017–09487 Filed 5–9–17; 8:45 am]

BILLING CODE 1301–00–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 07–294, MD Docket No. 10–234; FCC 17–42]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission expands the option to use Special Use FRNs on ownership reports for noncommercial educational broadcast stations (FCC Form 323–E). This action addresses several petitions for reconsideration of a prior Commission decision and properly balances the Commission's need to improve the integrity and usability of its broadcast ownership data with the concerns raised in the petitions for reconsideration.

DATES: Effective May 10, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Clark, Industry Analysis Division, Media Bureau, (202) 418–2330 or *Christopher.Clark@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in MB Docket No. 07–294 and MD Docket No. 10–234; FCC 17–42, was adopted on April 20, 2017, and released on April 21, 2017. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) Web page at *https://apps.fcc.gov/edocs_pubilc/.* The complete document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 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* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. *Background.* Commercial and noncommercial broadcasters are required to submit ownership reports every two years and on other occasions specified in the Commission's rules. These reports must include information about the individuals and entities that hold attributable interests in the station licensee, including officers and directors. Commercial broadcasters submit ownership reports on FCC Form 323, and noncommercial educational (NCE) broadcasters submit ownership reports on FCC Form 323–E.

2. In the *323 and 323–E Order* (81 FR 19431, Apr. 4, 2016, FCC 16–1, rel. Jan. 20, 2016), the Commission revised Forms 323 and 323–E to address issues with the Commission's data collection process that were identified previously by the United States Government Accountability Office (GAO), by researchers who wish to study the Commission's ownership data, and by the Third Circuit as part of its review of the Commission's Quadrennial Review proceeding. Among other things, the *323 and 323–E Order* revised Form 323–E to require that NCE filers provide a unique FCC Registration Number (FRN) generated by the Commission Registration System (CORES) for each attributable interest holder listed on Form 323–E, just as commercial broadcasters must do on Form 323. Importantly, the *323 and 323–E Order* also updated Form 323–E to collect information about the race, gender, and ethnicity of NCE attributable interest holders. These revisions addressed issues previously identified by GAO and harmonized Form 323–E with Form 323, which was revised in 2009 to collect such data.

3. In response to concerns that mandatory use of a traditional CORES FRN on Forms 323 and 323–E would require submission of individuals' full social security numbers (SSNs) to the Commission, the *323 and 323–E Order* provided for a Restricted Use FRN (RUFRN) establishing an alternative means for obtaining a unique identifier for individual attributable interest holders that requires submission of an individual's full name, residential address, date of birth, and only the last four digits of his or her SSN. The applicant's name and CORES FRN/RUFRN are available publicly, but the underlying identifying information is stored confidentially within the CORES database. The *323 and 323–E Order* allowed filers to report Special Use FRNs (SUFRNs), which do not require submission of personal information, for attributable individuals, but only if the filer first used reasonable and good-faith efforts to obtain RUFRNs or CORES FRNs from such individuals, including informing the individual of the risk of enforcement action for failing to provide an RUFRN or CORES FRN or to permit an RUFRN or CORES FRN to be obtained on his or her behalf.

4. Following the release of the *323 and 323–E Order,* the American Public Media Group (APMG), the NCE Licensees, the Public Broadcasting Parties, and the State University of New York (SUNY) (together, the Petitioners) timely filed petitions for reconsideration (Petitions), Petitions for Reconsideration of Action in Rulemaking Proceeding, 81 FR 31223 (May 18, 2016). The Petitioners request that the Commission reconsider its decision to apply the CORES FRN/RUFRN requirement to Form 323–E.

5. On January 4, 2017, the Media Bureau, acting on delegated authority, released the *323–E Order* (DA 17–5, rel. Jan. 4, 2017), dismissing and denying the Petitions pursuant to section 1.429(l) of the Commission's rules. Subsequently, the Bureau set aside the *323–E Order* pursuant to section 1.113 of the Commission's rules, concluding that it was more appropriate for the Petitions to be addressed at the Commission level. The Bureau returned the Petitions to pending status, stating that they would be considered by the Commission. Prior to the Bureau's action setting aside its *323–E Order,* the NCE Licensees and the University of Michigan filed applications for review of the *323–E Order.* Because the Bureau set aside the underlying order, we dismiss the applications for review as moot.

6. *Discussion.* We find that the Petitioners and other NCEs participating in this proceeding have raised legitimate concerns that the CORES FRN/RUFRN requirement, and the prospect of enforcement action for failing to comply with this requirement, may hinder their efforts to recruit volunteers to serve on their licensee boards and pose other unique challenges. Unlike their counterparts in the commercial context and certain not-for-profit entities, NCE governing board members are, in many cases, unpaid volunteers. Because unpaid NCE board members receive no fee or other remuneration for their services, they lack the financial incentive to serve on boards that paid directors or board members have. Indeed, the record indicates that some public broadcasters have difficulty finding qualified, committed individuals to donate their time and attention to station governance.

7. In the *323 and 323–E Order,* the Commission affirmed its commitment to protecting the privacy and security of personally identifiable information that the Commission collects, and we re-affirm that commitment here. Contrary to the Institute for Public Representation (IPR)'s supposition, our action here does not presume that Commission databases

are insecure and that individuals who obtain a CORES FRN or RUFRN will expose themselves to identify theft, nor are such concerns the basis for the relief we grant today. However, we recognize that some NCE licensees may face unique circumstances with respect to their ability to recruit and retain qualified individuals to serve in governance positions.

8. We share the Petitioners' concern that individuals who are reluctant to disclose personal information may then decline to serve as unpaid board members or, to the extent they are able to do so, those already serving as unpaid board members may resign rather than risk a Commission enforcement action for failure to provide the information needed to report a CORES FRN or RUFRN. Further, the Petitioners assert that many licensee board members—particularly those associated with colleges, universities, and state or local public broadcasting entities—are individuals chosen by public election or political appointment, or are *ex officio* members who serve by virtue of the public office they hold, such as Governor or State Superintendent of Education. The CORES FRN/RUFRN requirement and prospect of enforcement action could pose particular challenges in instances where a public official refuses to provide the information needed to obtain a CORES FRN or RUFRN but is unable to withdraw freely from the governing board.

9. We find that the *323 and 323–E Order* erred in rejecting the valid concerns raised by NCEs regarding the potential impact that the CORES FRN/RUFRN requirement, including the threat of possible enforcement action, could have in the NCE context. In discussing the availability of SUFRNs for both commercial and noncommercial ownership reports, the *323 and 323–E Order* went so far as to state that the Commission may take enforcement action against the filer and/or the ''recalcitrant individual'' in the event an SUFRN is used. As the Petitioners note, there is consensus among NCE commenters in this proceeding that requiring NCE filers to report CORES FRNs or RUFRNs for attributable individuals and inform such individuals about the risk of enforcement action could discourage volunteers from serving on the governing boards of NCE stations and pose unique challenges for board members who are politically elected or appointed. No commenter in this proceeding has disputed these assertions. The Petitioners contend that these assertions are based on the reactions of unpaid board members to the Commission's actions in this proceeding to date.

10. The *323 and 323–E Order* should have given more credence to the concerns raised by NCE broadcasters, particularly given their representations that these concerns were based on their experience with the day-to-day operations of their stations and interactions with volunteers serving on their governing boards. For example, in dismissing these assertions, the *323 and 323–E Order* did not adequately consider claims that some noncommercial entities that hold commercial station licenses previously encountered difficulties when attempting to obtain similar identifying information from board members. Moreover, the *323 and 323–E Order* did not adequately consider whether, when faced with the prospect of a Commission enforcement action against the individual interest holder, current or prospective board-member volunteers would decline to participate on the board.

11. As noted above, no party opposed the petitions for reconsideration. Parties filing as UCC et al. submitted an *ex parte* filing belatedly arguing that concerns about the chilling effect of the FRN requirement are speculative. In effect, the *ex parte* is an untimely opposition to the petitions for reconsideration, and we reject it for that reason. Alternatively and independently, we reject this claim on the merits for the reasons set forth above.

12. While use of unique identifiers improves the integrity and usability of the Commission's broadcast ownership data, we believe that the potential chilling effect on participation in NCE station governance, and the potentially deleterious effect that loss of NCE leaders could have on the noncommercial broadcast service to the public, outweigh this benefit in the NCE context. Commenters claim that difficulties retaining or attracting qualified individuals to serve in leadership positions will adversely affect station operations. Therefore, we conclude that the better course is to make reporting of CORES FRNs and RUFRNs optional for individuals who hold an attributable interest in an NCE station. Accordingly, NCE filers may report an SUFRN on Form 323–E for an attributable individual who has not obtained a CORES FRN or RUFRN at the time the filer submits its ownership report, without the need to first use reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFRN, including informing individuals about the threat of enforcement action.

13. In the *323 and 323–E Order,* the Commission noted that, in the limited cases where a non-profit entity holds a commercial license, the Commission will deem the filing of Form 323–E, in accordance with the standards set forth in the *Order,* compliant with the Commission's biennial filing obligation in those circumstances and the non-profit entity would not be required to file Form 323. Accordingly, we will deem the filing of Form 323–E, in accordance with the standards set forth herein and in the *323 and 323–E Order,* compliant with our biennial reporting requirement where a non-profit entity holds a commercial license.

14. We conclude that our action today will address the concerns raised by the Petitioners and NCE commenters in this proceeding. Unlike registering for a CORES FRN or RUFRN, obtaining an SUFRN does not require submission of any personal information, be it an SSN, date of birth, or residential address. Filers can generate an SUFRN simply by clicking a button within the electronic Form 323–E as the noncommercial ownership report is being prepared. Use of an SUFRN therefore does not involve any of the types of information that the Petitioners and other NCE commenters assert would discourage participation in NCE station governance. By allowing NCE filers to report SUFRNs without first using reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFRN, we will avoid the potential chilling effect that the prospect of enforcement action could have on participation in NCE station governance for unpaid board members who choose not to provide their personal information to the Commission.

15. We find that our action today properly balances the need to improve the integrity and usability of the Commission's broadcast ownership data with the public interest in avoiding the potential chilling effect that a mandatory reporting requirement could have on participation in NCE station governance. In the *323 and 323–E Order,* the Commission concluded that requiring unique identifiers for parties that hold attributable interests in broadcast stations helps ensure that the Commission's ownership data is reliable and usable for studies and analyses. We affirm these conclusions and deny the Petitions to the extent they suggest that we abandon entirely the use of CORES FRNs and RUFRNs in the NCE context. In light of the relief afforded by our action herein expanding the option to use SUFRNs on Form 323–E, there is no

justification for removing the option for NCE filers to report a CORES FRN or RUFRN for attributable individuals on Form 323–E.

16. We expect that allowing NCE filers greater flexibility to report SUFRNs will not delay or significantly limit the value of our data collection. Because expanded use of SUFRNs on Form 323–E will not require significant changes to the revised form, we do not believe that our action today will delay implementation of revised Form 323–E. Moreover, we expect that, due to the nature of our ruling, the use of SUFRNs and the resulting collective impact on our broadcast ownership data will be limited. In this regard, we emphasize that our ruling today applies only to noncommercial broadcasters. Commercial broadcasters remain subject to the CORES FRN and RUFRN requirements set forth in the *323 and 323–E Order.* Further, because SUFRNs are available only for *individuals,* unique FRNs will be reported for *entities* on Forms 323 and 323–E.

17. Importantly, as we have previously emphasized, filers that report an SUFRN for an attributable individual must do so consistently. If an SUFRN was reported previously for an individual and the individual does not have a CORES FRN or RUFRN, the filer must use the same SUFRN that was reported previously for that individual. Furthermore, if an individual is reported on multiple reports, the filer must ensure that the same SUFRN is reported consistently for that individual, assuming that the individual does not have a CORES FRN or RUFRN.

18. We also note that the Commission's prior decision to collect data on the race, ethnicity, and gender of individuals holding attributable interests in NCE licensees remains undisturbed, and this data will be available to the Commission and researchers for purposes of evaluating ownership diversity issues. To the extent IPR and UCC et al. state that the Commission will not collect race, gender, and ethnicity information from NCEs as a result of our action today, these belated pleadings are wrong. Although we will not require NCE licensees to report unique identifiers for all individuals holding attributable interests, the data on race, ethnicity, and gender will not be ''useless,'' as we will still be able to determine which licensees, stations, and markets have minorities and women in NCE leadership positions.

19. In addition, although we are expanding the option to use SUFRNs on Form 323–E, in many cases an NCE filer will continue to nonetheless report a CORES FRN or RUFRN for an attributable individual. For instance, some individuals with attributable interests in NCE stations may not object to obtaining a CORES FRN or RUFRN. Also, if an individual with an attributable interest in an NCE station has already obtained a CORES FRN or RUFRN for another reason (for example, because the individual also appears on one or more commercial Form 323 filings), filers must report that FRN for the individual on Forms 323 and 323–E. In such circumstances, use of the CORES FRN or RUFRN could not be expected to have a chilling effect on the individual's participation in NCE station governance. This further supports our conclusion that expanded use of SUFRNs on Form 323–E will have a limited collective impact on our data collection.

20. Because we are relieving NCE licensees of the obligation to report a CORES FRN or RUFRN for individuals holding attributable interests, we need not address NCE Licensees' and Public Broadcasting Petitioners' claim that the statutory authority the Commission relied on in adopting the requirement does not apply to NCE stations. These arguments are moot. Thus, we dismiss these portions of the NCE Licensees Petition and Public Broadcasting Parties Petition. SUNY's argument that the Privacy Act bars mandatory collection of SSNs from individuals holding attributable interests in NCE licensees is moot for the same reason, and we dismiss this aspect of the SUNY Petition.

21. In opposing the CORES FRN/RUFRN requirement, some commenters to this proceeding suggest that certain individuals serving on NCE boards may be uninvolved with the licensing, operation, or ultimate disposition of the noncommercial broadcast license and that it is not necessary to include information about these individuals on broadcast ownership reports. We take this opportunity to reiterate that, as discussed in the *323 and 323–E Order,* our rules already contemplate that circumstance and afford appropriate relief. Our attribution standards, including the standards applicable to attribution exemptions for officers and directors, apply to both commercial and NCE stations. Specifically, an officer or director can be exempted from attribution in the licensee if his or her duties are wholly unrelated to the operation of the broadcast station(s) at issue. Exempted officers and directors would not be reported as attributable interest holders on the Form 323–E and thus would not need to obtain a CORES FRN or RUFRN for Form 323 or Form 323–E reporting purposes. Appropriate use of this existing exemption would further reduce the burden on NCE licensees and potentially avoid the concern of a chilling effect raised by the Petitioners. We therefore encourage NCE filers to avail themselves of this exemption in order to avoid reporting potential interest holders who are uninvolved with the operation of the station(s) and whose interests therefore need not be reported.

22. Although some petitioners argue that differences between NCEs and commercial licensees make the collection of NCE data unnecessary, the Commission previously rejected this argument, and, as we have granted reconsideration regarding the specific aspect of our data collection that petitioners challenge, we need not revisit the Commission's response to this argument. We note that even though the Commission's multiple ownership rules do not apply to NCE stations, collecting race, gender, and ethnicity information from NCEs will enable the Commission, as well as GAO and other outside researchers, to more fully understand and analyze the broadcasting industry, and thereby support the Commission's efforts to promote diversity of ownership in broadcasting. In an *ex parte* filed well after the close of the pleading cycle, public broadcasting representatives filing as ''Public Broadcasters'' ask the Commission to consider returning to the *status quo ante* by reversing its prior decision to adopt new rules for noncommercial stations in this proceeding. To the extent this request applies to other improvements adopted in the *323 and 323–E Order,* including the collection of race, gender, and ethnicity information from NCE Licensees, Public Broadcasters' request is untimely and is procedurally barred.

23. *Procedural Matters.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order, which is summarized below.

24. *Paperwork Reduction Act Analysis.* This document contains a non-substantive and non-material modification of information collection requirements that were previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, we note 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 specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

25. In this present document, we have assessed the effects of requiring NCE filers to report a CORES FRN or RUFRN for each attributable interest holder on ownership reports filed with the Commission, and we have expanded the option for such filers to report SUFRNs for attributable individuals by eliminating the requirement that NCE filers first use reasonable and good-faith efforts to obtain the personal information needed to report a CORES FRN or RUFRN before using an SUFRN. We find that this action properly balances the need to improve the integrity and usability of the Commission's broadcast ownership data with the potential chilling effects that a mandatory reporting requirement could have on participation in NCE station governance, and that our action will have the effect of reducing the burden on NCE filers, including those with fewer than 25 employees.

26. *Supplemental Final Regulatory Flexibility Analysis.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted in this Order on Reconsideration. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The FRFA accompanying the *323 and 323–E Order* described and estimated the number of small entities that would be affected by the revisions to FCC Forms 323 and 323–E. The actions taken in this Order on Reconsideration apply to the same entities affected by the revisions to Form 323–E that the Commission adopted in the *323 and 323–E Order.*

27. *Television Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of less than $25,000,000, 25 had annual receipts ranging from $25,000,000 to $49,999,999, and 70 had annual receipts of $50,000,000 or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

28. The Commission has estimated the number of licensed commercial television stations to be 1,383. Of this total, 1,275 stations (or about 92 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on March 9, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE television stations to be 394. The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

29. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

30. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 2,849 firms in this category operated in that year. Of that number, 2,806 had annual receipts of less than $25,000,000, 17 had annual receipts ranging from $25,000,000 to $49,999,999, and 26 had annual receipts of $50,000,000 or more. Based on this data we therefore estimate that the majority of commercial radio stations are small entities under the applicable SBA size standard.

31. The Commission has estimated the number of licensed commercial radio stations to be 11,420. Of this total, 11,506 stations (or about 99.9 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on March 9, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE radio stations to be 4,112. The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

32. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We further note that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis; thus, our estimate of small businesses may therefore be over-inclusive.

33. *Class A TV and LPTV Stations.* The same SBA definition that applies to television broadcast licensees would apply to Class A TV stations and other low power television (LPTV) stations. The SBA defines a television broadcast station as a small business if such station has no more than $38.5 million in annual receipts. As of March 31, 2017, there are approximately 417 licensed Class A stations and 1,965

licensed LPTV stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

34. The Order on Reconsideration provides NCE filers with greater flexibility to report SUFRNs than previously allowed by the *323 and 323–E Order.* It does not adopt additional reporting, recordkeeping, other compliance requirements.

35. The Order on Reconsideration provides relief to NCE filers by allowing them wider latitude to report SUFRNs—which do not require disclosure of an SSN, date of birth, or other personal information—for individual attributable interest holders reported on Form 323–E. Accordingly, NCE filers may report an SUFRN on Form 323–E for an attributable individual who has not obtained a CORES FRN or RUFRN at the time the filer submits its ownership report, without the need to first use reasonable and good-faith efforts to obtain the information needed to report a CORES FRN or RUFRN. The Commission concludes that allowing NCEs greater flexibility to report an SUFRN for an attributable individual, in lieu of a CORES FRN or RUFRN, will address the concerns that have been raised regarding the potential impact of the CORES FRN/RUFRN requirement on NCE stations, including small entities. The Chief Counsel for Advocacy of the SBA did not file any comments in response to the proposed rules in this proceeding.

36. The Commission will send a copy of this *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

37. *Ordering Clauses. Accordingly, it is ordered* that, pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 309, and 310, this Order on Reconsideration IS ADOPTED.

38. *It is further ordered that,* pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration filed by the American Public Media Group, the NCE Licensees, the Public Broadcasting Parties, and Lisa S. Campo on behalf of the State University of New York, *are granted in part, dismissed* to the extent discussed in footnote 42, *and otherwise are denied,* to the extent stated herein.

39. *It is further ordered* that the applications for review filed by the NCE Licensees and the University of Michigan *are dismissed* as moot.

40. *It is further ordered* that, pursuant to section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), and section 1.427(b) of the Commission's rules, 47 CFR 1.427(b), this Order on Reconsideration *shall be effective* May 10, 2017, except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 150909839–7369–02]

RIN 0648–XE184

Endangered and Threatened Wildlife and Plants; Final Rule to List 6 Foreign Species of Elasmobranchs Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final rule to list six foreign marine elasmobranch species under the Endangered Species Act (ESA). These six species are the daggernose shark (*Isogomphodon oxyrhynchus*), Brazilian guitarfish (*Rhinobatos horkelii*), striped smoothhound shark (*Mustelus fasciatus*), narrownose smoothhound shark (*Mustelus schmitti*), spiny angelshark (*Squatina guggenheim*), and Argentine angelshark (*Squatina argentina*). We are publishing this final rule to implement our final determination to list the daggernose shark, Brazilian guitarfish, striped smoothhound shark, spiny angelshark and Argentine angelshark as endangered species under the ESA, and the narrownose smoothhound shark as a threatened species under the ESA. We have reviewed the status of these six species, including efforts being made to protect these species, and considered public comments submitted on the proposed rule as well as new information received since publication of the proposed rule. We have made our final determinations based on the best scientific and commercial data available. We will not designate critical habitat for any of these species because the geographical areas occupied by these species are entirely outside U.S. jurisdiction, and we have not identified any unoccupied areas within U.S. jurisdiction that are essential to the conservation of any of these species.

DATES: This final rule is effective June 9, 2017.

ADDRESSES: Chief, Endangered Species Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Maggie Miller, NMFS, Office of Protected Resources (OPR), (301) 427–8403. Copies of the petition, status review reports, **Federal Register** notices, and the list of references are available on our Web site at *http://www.nmfs.noaa.gov/pr/species/petition81.htm.*

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species or subpopulations as threatened or endangered under the ESA. This petition included species from many different taxonomic groups, and we prepared our 90-day findings in batches by taxonomic group. We found that the petitioned actions may be warranted for 24 of the species and 3 of the subpopulations and announced the initiation of status reviews for each of the 24 species and 3 subpopulations (78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376, November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). On December 7, 2015, we published a proposed rule to list the daggernose shark, Brazilian guitarfish, striped smoothhound shark, and Argentine angelshark as endangered species under the ESA, and the narrownose smoothhound shark and

spiny angelshark as threatened species under the ESA (80 FR 76067). We requested public comment on information in the status reviews and proposed rule, and the comment period was open through February 5, 2016. This final rule provides a discussion of the information we received during and after the public comment period and our final determination on the petition to list these six foreign marine elasmobranchs under the ESA. The status of the findings and relevant **Federal Register** notices for the other 18 species and 3 subpopulations can be found on our Web site at *http://www.nmfs.noaa.gov/pr/species/petition81.htm.*

Listing Species Under the Endangered Species Act

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a ''species'' under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.''

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term ''foreseeable future.'' It is appropriate to interpret ''foreseeable future'' as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following five factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any State or foreign nation to protect the species.

In making a listing determination, we first determine whether a petitioned species meets the ESA definition of a ''species.'' Next, using the best available information gathered during the status review for the species, we assess the extinction risk of the species. In our extinction risk assessment, we considered the best available information to evaluate the level of risk faced by each of the six species. For each extinction risk analysis, we evaluated the species' demographic risks, such as low abundance and productivity, and threats to the species including those related to the factors specified by the ESA section 4(a)(1)(A)–(E), and then synthesized this information to estimate the extinction risk of each species.

Because species-specific information (such as current abundance) is sparse, qualitative ''reference levels'' of risk were used to describe extinction risk. The definitions of the qualitative ''reference levels'' of extinction risk—''Low Risk,'' ''Moderate Risk,'' and ''High Risk''—were as described here. A species is at ''Low Risk'' of extinction if it exhibits a trajectory indicating that it is unlikely to be at a moderate level of extinction risk in the foreseeable future (see description of ''Moderate Risk'' below). A species may be at low risk of extinction due to its present demographics (*i.e.,* stable or increasing trends in abundance/population growth, spatial structure and connectivity, and/or diversity) with projected threats likely to have insignificant impacts on these demographic trends. ''Moderate Risk''—a species is at moderate risk of extinction if it exhibits a trajectory indicating that it will more likely than not be at a high level of extinction risk in the foreseeable future (see description of ''High Risk'' below). A species may be at moderate risk of extinction due to its present demographics (*i.e.,* declining trends in abundance/population growth, spatial structure and connectivity, and/or diversity and resilience) and/or projected threats and its likely response to those threats. ''High Risk''—a species is at high risk of extinction when it is at or near a level of abundance, spatial structure and connectivity, and/or diversity that place its persistence in question. The demographics of the species may be strongly influenced by stochastic or depensatory processes. Similarly, a species may be at high risk of extinction if it faces clear and present threats (*e.g.,* confinement to a small geographic area; imminent destruction, modification, or curtailment of its habitat; or disease epidemic) that are likely to create such imminent demographic risks.

After completion of the extinction risk analysis, we then assess efforts being made to protect the species to determine if these conservation efforts are adequate to mitigate the existing threats. Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation to protect the species. Finally, taking into account the species' extinction risk, threats, and any protective efforts identified from the above assessment, we determine if the species meets the definition of ''endangered species'' or ''threatened species.''

Summary of Comments

In response to our request for public comments on the proposed rule, we received information and/or comments from three parties. One commenter agreed with the listing and provided no new or substantive data or information relevant to the listing of these six species. We also directly solicited comments from the foreign ambassadors of countries where the six elasmobranch species occur and received a response from the Embassy of the Argentine Republic. Summaries of the substantive comments received from both the public comment period and the Embassy of the Argentine Republic, and our responses, are provided below by topic and species.

Comments on ESA Section 4(a)(1) Factors

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Daggernose Shark

Comment 1: One commenter noted that we should look more closely at the threat of habitat loss for the daggernose shark, and, in particular, increasing threats to mangrove habitat as a result of rising sea levels due to climate change, increasing human populations in coastal areas, and increasing mariculture activities near mangroves. The commenter suggested that we consider the extent to which these threats may harm the species, both now and in the foreseeable future, and the extent to which this threat is, or may become, operative in portions of the species' range, even if this threat has been neutralized to some degree in other parts of the species' range.

Response: As noted in the proposed rule (80 FR 76068; December 7, 2015), we considered the information in the status review report (Casselberry and Carlson 2015a), information submitted by the public, as well as information we compiled separately to assess the extinction risk of the daggernose shark. While the status review presented data on mangrove forest declines, we did not find evidence that this was a significant threat to the species. As noted in the status review, daggernose sharks are found in shallow waters along mangrove-lined coasts, but their reliance specifically on the presence of mangroves within these areas is unknown. Rather, the status review notes that daggernose sharks are most abundant in estuarine and river mouth areas, preferring low lying and indented coastlines, and are strongly associated with rocky or muddy bottoms and highly turbid waters. There is no indication that mangroves are an integral feature of the species' habitat or that the species has an obligate relationship with mangroves. As such, we do not find that available information indicates that the decline in mangrove forests in portions of the species' range is a threat that significantly contributes to the species' risk of extinction.

Comment 2: One commenter stated that it is likely that there has been a large range contraction for some of the proposed shark species. The commenter noted that, based on Barreto et al. (2015) (which has now been published as Barreto et al. 2016), several shark species, including the daggernose shark, may be close to extinction in Brazilian waters. The commenter also cited Willems et al. (2015) as evidence that daggernose sharks may have been extirpated from the waters of Guyana as well, resulting in a significant combined range contraction. The commenter noted that this may be indicative of additional extirpations as Guyana does not represent the northernmost extreme of the species' range. Citing Willems et al. (2015), the commenter stated that daggernose sharks were caught off Guyana in the 1960s but were not observed in a 2015 study, indicating that they may no longer be present there, or that they have at least been reduced to the point of rarity. The commenter asserted that such range contractions are concerning and may indicate that additional range contractions have happened in the other range countries of the daggernose shark where information is lacking.

Response: Neither of the papers cited by the commenter (Barreto et al. 2015 or Willems et al. 2015) provided any new information on the distribution or extinction risk of the daggernose shark. Barreto et al. (2015) referenced the Instituto Chico Mendes de Conservação da Biodiversidade (ICMBio) assessment of daggernose shark (ICMBio 2014) as support for its statement that the species may be close to extirpation in Brazil. This assessment did not provide any information regarding evidence of a range contraction for the species, nor did it provide new information that was not already reviewed, considered, or cited in the proposed rule. The other paper, Willems et al. (2015), describes a study where researchers conducted monthly trawl sampling of 15 locations off the coast of Suriname from February 2012—April 2013 to characterize the demersal fish fauna on the inner continental shelf. The authors noted that daggernose sharks were not observed in the samples but had previously been caught off Guyana in the 1960s, and hypothesized that fishing activity may have led to local extirpations, presumably off Suriname (where the study took place). There was no data or information in the Willems et al. (2015) study to indicate that daggernose sharks are no longer present off Guyana.

We acknowledge that overutilization is the primary threat to the daggernose shark, contributing to its present high risk of extinction; however, we do not find that the information provided by the commenter indicates that the species is also at risk of a significant range contraction. Overall, there is a severe lack of information on the species' historical and current distribution, with only scarce records of the species throughout Suriname, Guyana, and Trinidad and Tobago. However, the species is mobile (as demonstrated by its seasonal migrations), and while it is uncertain whether local populations have been fished to extirpation, there is no information to indicate that the species presently suffers from a curtailment of its range.

Brazilian Guitarfish

Comment 3: One commenter disagreed with our conclusion that habitat destruction or modification is not an operative threat to the Brazilian guitarfish, and suggested we consider the impacts of trawling activities on Brazilian guitarfish habitat. The commenter pointed out a peer reviewer comment on the status review (Casselberry and Carlson 2015b) that said ''[i]n this document is cited that there is no specific information available on how trawling has affected the Brazilian guitarfish's habitat. However, knowing that they feed mainly on benthic community, we can assume the trawling may affect the food chain in which *R. horkelii* is inserted.'' The commenter asserted that the peer reviewer made an important common sense point that applies to all species that rely on benthic habitats that are damaged by trawling, and that this type of damage to the species' habitat will inevitably harm the species. The commenter suggested we consider this damage as an additional source of harm to the species, despite the fact that it may be difficult to quantify. The commenter then noted that this benthic habitat threats discussion applies to all species that are reliant on benthic habitats that are, or may be, impacted by trawlers, including the striped smoothhound shark, narrownose smoothhound shark, Argentine angelshark and spiny angelshark.

Response: While trawling activities affect the benthic community and may potentially affect the food chain for *R. horkelii* and the other elasmobranch benthic feeders, we have no information to indicate that this is presently or historically the case, or contributing to the extinction risk of any of the species. Additionally, we note that broad or general information, or the identification of factors that could negatively impact a species, do not indicate that listing is necessarily warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species is responding to or reasonably likely to respond to that factor in a negative fashion; then we assess the potential significance of that negative

response. While we reviewed and considered the information from the status review and information collected prior to the proposed rule on habitat destruction or modification as a potential threat, we found no information to indicate that this factor is contributing significantly to the species' risk of extinction. Additionally, neither the information provided by the commenter, nor information in our files, indicates that trawling has altered the benthic habitat in such a way that it is leading to declines in food resources for the Brazilian guitarfish or any of the other species considered in this final rule. As such, our conclusion that the information does not indicate that habitat destruction or modification is an operative threat on these species remains the same.

Narrownose Smoothhound Shark

Comment 4: One commenter noted that narrownose smoothhounds have exhibited elevated levels of mercury and cadmium in their tissue and cited to the status review for the species (Casselberry and Carlson 2015c). The commenter asserted that these trace metals bioaccumulate up the food chain from pollutant sources in the species' habitat and can cause a variety of harm to higher trophic level species, like the narrownose smoothhound, and provided Gelsleichter and Walker (2010) as a reference. The commenter concluded that the presence of these pollutants in the narrownose smoothhound's habitat, and their resultant bioaccumulation and biomagnification in the species, is an additional habitat-related threat to the species' continued existence.

Response: As the status review (Casselberry and Carlson 2015c) notes, the study that found elevated levels of mercury and cadmium in narrownose smoothhound shark tissues in Argentina (Marcovecchi et al. 1991) did not provide any information on the impact of these metals on the survival of the individual sharks. Additionally, we found no information on the impact of toxin and metal bioaccumulation specifically in narrownose smoothhound populations. In fact, there is no information on the lethal concentration limits of toxins or metals in narrownose smoothhound sharks, or evidence to suggest that current concentrations of environmental pollutants are causing detrimental physiological effects to the point where the species may be at an increased risk of extinction. As such, at this time, the best available information does not indicate that the present bioaccumulation rates and concentrations of environmental pollutants in the tissues of narrownose smoothhound sharks are threats significantly contributing to the species' risk of extinction throughout its range, now or in the foreseeable future.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

General Comments Applicable to Multiple Species

Comment 5: One commenter provided general information on the threat of overfishing of sharks and rays worldwide. Citing an analysis by Davidson et al. (2015), the commenter noted that global landings of sharks and rays have declined by approximately 20 percent, which the authors attribute to population declines rather than fishery management measures. The commenter also specifically highlighted the increase in landings by Argentina (5–10 percent) and Brazil (1–5 percent) from 2003 to 2011, and the failure of these countries to meet all of the sustainable fishing objectives set out in their respective Food and Agriculture Organization of the United Nations (FAO) National Plans of Action for the conservation of sharks (hereafter referred to as FAO NPOA-sharks) as evidence that current regulatory mechanisms in these range states are inadequate and that overfishing will continue to cause the proposed species to decline further.

Response: We reviewed the Davidson et al. (2015) paper and found that while it gives a broad overview of the trend in global shark landings, and suggests that overfishing, rather than improved management, explains the global declines observed in shark and ray landings since 2003, it does not provide any new or substantive species-specific information. In assessing threats, we look for information indicating that not only is a particular species exposed to a factor, but also that the species is responding to or reasonably likely to respond to that factor in a negative fashion in order to assess the potential significance of that factor to a particular species. We previously considered the FAO landings data (upon which the Davidson et al. (2015) paper is based) and examined the management and adequacy of existing regulatory measure as it relates to each of the proposed species' extinction risks (not just sharks and rays, in general), with this discussion provided in our proposed rule. Additionally, based on new information received since the publication of the proposed rule, we have revised this discussion specifically for the narrownose smoothhound and spiny angelshark, which can be found below in the sections Summary of Factors Affecting the Six Species and Extinction Risk.

Daggernose Shark

Comment 6: One commenter, referencing Barreto et al. (2015), stated that monitoring of fishing in countries, including Brazil, has been inconsistent. The commenter provides the following quote from Barreto et al. (2015): ''Nowadays, there are 750 longliners with permission to catch specifically *P. glauca, I. oxyrhinchus* and *C. falciformis* in Brazilian waters. For comparison, in our database, over more than 30 years, about 200 vessels reported data.'' The commenter asserts that this information indicates a large increase over historical numbers in vessels with permission to catch daggernose sharks.

Response: The commenter provides a footnote to their statement that the reference to *I. oxyrhinchus* in the Barreto et al. (2015) quote could be referring to the daggernose shark (*Isogomphodon oxyrhynchus*) or the shortfin mako shark (*Isurus oxyrinchus*), as the spelling used was not consistent with either species' Latin name. However, we disagree with the commenter and note that given Barreto et al.'s (2015) discussion and use of *I. oxyrhinchus* throughout their paper as referring to the shortfin mako shark, the quote is clearly referencing the number of longliners that are permitted to catch blue sharks, shortfin mako sharks, and silky sharks in Brazilian waters.

In the footnote, the commenter additionally provides a Web site link to indicate that some Brazilian fishing licenses specifically allow for catch of daggernose sharks (*http://sinpesq.mpa.gov.br/rgp-publico/web/index.php/frota/detalhe/num_frota/1.02.001*); however, we were unable to access this Web page to verify the information. We note that the species is listed in Annex I of Brazil's endangered species list (''Lista de Espécies da Fauna Brasileira Ameaçadas de Extinção''), which prohibits the capture of the species except for scientific purposes, and, therefore, fishing licenses allowing the capture of the species for commercial or recreational purposes is unlikely. Additionally, as discussed in the proposed rule, the species is most susceptible to being caught in the artisanal gillnet fisheries, given their depth and distribution. As such, the impact of an overall increase in Brazilian longliners does not change our conclusion regarding the extinction risk of the species.

Striped Smoothhound Shark

Comment 7: Citing the status review for the striped smoothhound shark (Casselberry and Carlson 2015d), one commenter noted that striped smoothhound shark biomass is concentrated in a very small area of coastline in southern Rio Grande do Sul (indicating that this is an important nursery area for the species). The commenter asserted that the concentration of the species in this highly limited area of abundance appears to be due to the population declines that the species has already experienced and referenced the decline in neonate production between 1981 and 2005 (Casselberry and Carlson 2015d). The commenter concluded that this makes the species vulnerable to population-level effects from impacts occurring in a relatively limited area. The commenter suggested that we consider the extent to which this highly concentrated area of abundance elevates the species' extinction risk.

Response: The commenter provided no new information. We considered the above information, including the decline in neonate production, which is discussed in detail in the *Historical and Current Distribution and Population Abundance, Demographic Risk Analysis* and *Risk of Extinction* sections of the proposed rule, with the findings contributing to our assessment of the species as endangered.

Narrownose Smoothhound Shark

Comment 8: One commenter disagreed with our characterization of some information related to overutilization of the narrownose smoothhound shark in Uruguay. The commenter asserted that an abundance decline of the species is the only plausible explanation for the large decline in narrownose smoothhound catch in Uruguay (over 85 percent from 1999–2013), particularly since there has not been a decrease in fishing effort. The commenter asserted: ''Where a market for the species still exists, as it does in neighboring Argentina, fishermen will not simply ignore the species'' and that ''Though effort information does not exist, the cause of this decline in catch is clear—it is caused by a corresponding, and likely very large, decline in narrownose smoothhound population numbers in these waters.'' The commenter emphasized that speculation on an alternative explanation for the decrease in landings of narrownose smoothhound shark in Uruguay is unfounded.

Response: With the exception of the Barreto et al. (2015) study, the commenter does not provide any new information to consider, besides their opinion, in regards to the cause of the decline in landings of the species. Based on a review of the reference provided in the comment (*i.e.,* Barreto et al. 2015), we do not agree with the commenter that the information provided implies any trend in fishing effort specific to narrownose smoothhounds in Uruguay. We also note that updated data for narrownose smoothhound reported to the FAO showed an increase in Uruguayan reported landings from 194 t in 2013 to 663 t in 2014. However, since publication of the proposed rule, we have received new data showing trends in landings, catch-per-unit-effort (CPUE), and biomass of the narrownose smoothhound in the Argentine-Uruguayan Common Fishing Zone (AUCFZ), and have revised the discussion concerning the threats to the species and its current extinction risk. This new discussion can be found below in the sections Summary of Factors Affecting the Six Species and Extinction Risk.

Comment 9: One commenter provided new information regarding the post-release survivorship of narrownose smoothhound sharks based on a study that evaluated the survivorship of elasmobranchs captured by bottom trawlers (Chiaramonte et al. undated). The commenter stated that in addition to retention of targeted and bycaught individuals, this new study provides evidence that narrownose smoothhounds respond poorly to capture and likely face very high post-release mortality when caught by bottom trawl gear.

Response: Based on the information in Chiaramonte et al. (undated), we agree with the commenter that *M. schmitti* likely has poor survivorship after being caught by trawl gear. While the post-release survival experiment was based on only two individuals (both dead after 15–30 minutes in a holding tank on the trawl vessel), 55 percent of the 52 narrownose smoothhounds captured were described as being ''not in good condition'' (*i.e.,* either immobile or dead). However, we note that only juveniles were assessed in the study and, therefore, the survivorship of larger adults in trawl gear remains unknown. In terms of the impact on extinction risk, we find that this new information does not change our assessment of the species being at a moderate risk of extinction. We note that the species is threatened with overutilization by commercial and artisanal fisheries, and because it is commercially sought after throughout its range, we consider the likelihood of the species being discarded (alive or dead) to be very low.

Comment 10: One commenter referenced a study (Fields et al. 2015) that assessed species composition from a collection of 72 processed shark fins and found that one fin, from a United States shark fin soup sample, belonged to the narrownose smoothhound shark. The commenter concluded that the findings indicated that not only is the species exploited for the shark fin trade, but that it is also the subject of international trade, at least some of which implicates the United States specifically.

Response: We reviewed the Fields et al. (2015) study, and while one shark fin was genetically identified as *M. schmitti,* we found no other information to suggest that the species is actively being targeted for the international shark fin trade. Additionally, the authors of the study note that the samples were ''not collected in a systematic or random manner and thus do not provide any information on the overall species composition of the trade'' in the sampling regions. Although fins of *M. schmitti* may enter international trade, the available data do not indicate that this species is a large component of the shark fin trade or that this utilization of the shark is significantly contributing to the species' extinction risk.

Comment 11: One commenter cited to the FAO capture production statistics referenced in Davidson et al. (2015) as evidence of the global exploitation and population decline of the narrownose smoothhound, and noted that the species is still heavily fished in Uruguay and along the Uruguay/Argentina border. Using Jaureguizar et al. (2014) and Ligrone et al. (2014) as support, the commenter asserted that the species is still targeted and experiencing heavy fishing pressure, particularly during its reproductive period, leading the commenter to conclude that the narrownose smoothhound shark fishery is highly unsustainable.

Response: As mentioned in the proposed rule, we also considered the landings data reported to the FAO for *M. schmitti,* noting that landings were on a declining trend since the mid-2000s, down to 194 t in 2013; however, due to the absence of effort information, we noted that the cause of the decline was not entirely clear. For example, from 2002 to 2010, *Mustelus* spp. catch limits were imposed in the AUCFZ, and starting in 2011, catch limits specifically for narrownose smoothhound were established (which could affect landings data). The most recent FAO data for 2014 actually show over a 3-fold

increase in landings for Uruguay from 2013, up to 663 t.

We reviewed the Jaureguizar et al. (2014) study and found that while it provides information on the composition of small-scale gillnet fishery catch from two neighboring fishing communities in Argentina, and notes the likely landing of *M. schmitti* during its spring migration for reproduction purposes, the study's main objective was to examine seasonal fishing effort for different species over the course of a single year. We also reviewed the Ligrone et al. (2014) paper, which surveyed 21 artisanal fishermen operating from La Paloma and Cabo Polonio ports and found that *Mustelus* spp. represented 40 percent of the catch. The sharks were caught during shark fishing, which occurred mostly between April and October around the ports of La Paloma and 12 nautical miles (nmi) from Cabo Polonio port. While these studies confirm that fishing for narrownose smoothhound sharks occurs, the information from these studies does not provide an indication of the present status of the shark, which could indicate the sustainability of these artisanal fishing operations.

However, we agree with the commenter that overutilization of narrownose smoothhound is a threat to the species, and we stated this in the proposed rule: ''The primary threat to the narrownose smoothhound is overutilization in commercial and artisanal fisheries as the species is intensely fished throughout its entire range, including within its nursery grounds.'' We considered the available fisheries data as well as the trends in the species' demographic factors to make our extinction risk determination and do not find that the information provided by the commenter changes our conclusion. We note that since publication of the proposed rule, we have also received new data showing trends in landings, CPUE, and biomass of the narrownose smoothhound in the AUCFZ, and have revised the discussion concerning the threats to the species and its current extinction risk. This new discussion can be found below in the sections Summary of Factors Affecting the Six Species and Extinction Risk.

Comment 12: One commenter provided another possible explanation for the decline in *M. schmitti* catches in the AUCFZ since 2010 (besides reduced fishing pressure and adherence to catch regulations), suggesting that the total allowable catch quotas were set too high and, therefore, do not actually restrict catch in any meaningful way. The commenter stated that inadequate quotas, compounded by pervasive inadequate enforcement, render the regulatory measures wholly inadequate to conserve the species.

Response: The commenters provided no new information that was not already considered in the proposed rule. However, since publication of the proposed rule, we have received new data showing trends in landings, CPUE, and biomass of the narrownose smoothhound in the AUCFZ, and have revised the discussion concerning the threats to the species and its current extinction risk. This new discussion can be found below in the sections Summary of Factors Affecting the Six Species and Extinction Risk.

Spiny Angelshark

Comment 13: One commenter suggested that we should consider whether the survey data for *S. guggenheim* is recent enough that it still accurately accounts for the species' abundance at present, and whether impacts suffered since the conclusion of the survey are taken into account. The commenter cited Jaureguizar et al. (2014) to show that the highest CPUE of *S. guggenheim* occurs during its reproductive period and claimed that this unsustainable practice will increase overutilization pressure on the species and cause very fast declines, even where the species may be relatively numerous.

Response: The commenter did not provide any recent survey data for *S. guggenheim* for us to consider. We reviewed the Jaureguizar et al. (2014) study and while it provides information on the composition of small-scale gillnet fishery catch from two neighboring fishing communities at the southern boundary of the Río de la Plata, we do not find that it makes any generalizations as to the CPUE of the species throughout its range. Rather, it notes that in relation to the other seasonal catch in these fishing communities, *S. guggenheim* has the highest CPUE during the autumn, when the species moves into nearshore waters for reproductive purposes.

We also note that since publication of the proposed rule, we have received new data showing trends in landings, CPUE, and biomass of the spiny angelshark within the AUCFZ that leads us to conclude that the species is at a higher risk of extinction than what was stated in the proposed rule. We have subsequently revised the discussion concerning threats to the species and its current extinction risk. This new discussion can be found below in the sections Summary of Factors Affecting the Six Species and Extinction Risk.

Comment 14: One commenter, citing Ligrone et al. (2014), noted that the Uruguayan artisanal fleet, which in 2007 recorded a total of 726 vessels for Río de la Plata Estuary and the Atlantic coast, operates on a multispecies basis, with angelsharks (*Squatina* spp.) being one of the main species caught, representing 11 percent of the catch. Additionally, the commenter, quoting Ligrone et al. (2014), stated that the impacts of these Uruguayan artisanal fisheries on the species may be exacerbated as they ''share their main targeted species sequentially, and often spatially'' with the industrial fisheries.

Response: We reviewed the Ligrone et al. (2014) paper and note that the authors are not describing the practices of the 726 vessels mentioned above, but rather are specifically describing the artisanal fisheries operating off the Uruguayan Atlantic coast. According to the authors, 82 artisanal fishing vessels are registered and fish on a multi-species basis, operating between the coast and 15 nmi offshore. While *Squatina* spp. represented 11 percent of the catch, the authors do not provide actual catch numbers or trends in effort over multiple years that may provide additional information as to the status of the species. In the proposed rule, we considered the impact of both industrial and artisanal fisheries on spiny angelsharks, noting that these fisheries primarily operate in depths that ''cover the entire depth range of the spiny angelshark'' (80 FR 76095) and, therefore, fish all life stages of the species (80 FR 76099).

However, as noted previously, since publication of the proposed rule, we have received new data showing trends in landings, CPUE, and biomass of the spiny angelshark within the AUCFZ that leads us to conclude that the species is at a higher risk of extinction than what was stated in the proposed rule. We have subsequently revised the discussion concerning threats to the species and its current extinction risk. This new discussion can be found below in the sections Summary of Factors Affecting the Six Species and Extinction Risk.

Disease or Predation

Narrownose Smoothhound Shark

Comment 15: One commenter disagreed with our conclusion that neither disease nor predation were operative threats on the species, and argued that this determination is inconsistent with the information presented in the status review. The commenter pointed to information in the status review (Casselberry and

Carlson 2015c) describing a survey off the coast of Brazil that found four individuals (4.21 percent of the surveyed population) with Hifalomicose (a fungal infection that causes muscle necrosis with hyphal penetration into the cartilage). The commenter quoted from the status review: ''All infected individuals displayed necrosis on their snout and an additional infection from the yeast, *Fusarium solani.* The ulcers from the necrosis turn greenish and result in major bleeding, which leads to death. This infection can cause widespread infestations because the fungus is easily transmitted and has a fast life cycle.'' The commenter argued that this information indicates disease as a fairly serious threat to the species, and urged us to assess this threat when making our final listing determination for the species.

Response: We acknowledge that the information in the status review confirms some incidence of fungal infection in the narrownose smoothhound; however, the information in the status review is based on a single study with data that is over 20 years old. Additionally, the commenter did not provide any new information regarding how fungal infections are having ongoing negative population-level effects on the species. Therefore, without any new information provided by the commenter, we maintain our previous conclusion in the proposed rule that disease is not likely a significant contributing factor to the species' extinction risk.

Comment 16: One commenter disagreed with our determination that predation is not an operative threat to the narrownose smoothhound, and argued that our determination is inconsistent with information presented in the status review for the species. The commenter pointed to the status review (Casselberry and Carlson 2015c), which determined that narrownose smoothhounds are an important prey item for large sharks, including the broadnose sevengill shark (*Notorynchus cepedianus*), the copper shark (*Carcharhinus brachyurus*), and the sand tiger shark (*Carcharias taurus*). The commenter contends that although predation by a native predator would typically not cause the extinction of a prey species under natural conditions, *M. schmitti* populations are already depleted and are subject to additional threats. As a result, any additional mortality will exacerbate the threats that they are already subjected to. The commenter concluded that predation by other shark species is causing cumulative and synergistic impacts to narrownose smoothhounds that are exacerbating the other threats that they are facing.

Response: We acknowledge that the information from the status review confirms that narrownose smoothhounds are a prey item of various shark species, and we considered this information in the proposed rule; however, the commenter provided no new information regarding predation rates of *M. schmitti* or how predation is having negative population-level effects on the species. Thus, the statement from the commenter that predation is causing cumulative and synergistic impacts to the species is speculative. Without any new information provided by the commenter, we maintain our previous conclusion in the proposed rule that predation is not likely a significant contributing factor to the species' extinction risk throughout its range.

Spiny Angelshark

Comment 17: The same commenter from *Comment 16* also disagreed with our determination that predation is not an operative threat to the spiny angelshark, and argued that our determination is inconsistent with information presented in the status review for the species. The commenter pointed to the status review (Casselberry and Carlson 2015e), which determined that small spiny angelsharks are infrequently cannibalized by large male spiny angelsharks and eaten by sand tiger sharks, copper sharks, and broadnose sevengill sharks. The commenter contends that although predation by a native predator would typically not cause the extinction of a prey species under natural conditions, spiny angelshark populations are already depleted and are subject to additional threats. As a result, any additional mortality will exacerbate the threats that they are already subjected to. The commenter concluded that predation by other shark species is causing cumulative and synergistic impacts to spiny angelsharks that are exacerbating the other threats that they are facing.

Response: We acknowledge that the information from the status review confirms that spiny angelsharks are a prey item of various shark species, and we considered this information in the proposed rule; however, the commenter provided no new information regarding predation rates of spiny angelsharks or how predation is having negative population-level effects on the species. Thus, the statement from the commenter that predation is causing cumulative and synergistic impacts to the species is speculative. The status review notes that predation of spiny angelsharks by tiger and broadnose sevengill sharks has only been documented in ''low frequencies,'' suggesting that spiny angelsharks may not be a preferred prey item of these species. Without any new information provided by the commenter, we maintain our previous conclusion in the proposed rule that predation is not likely a significant contributing factor to the species' extinction risk throughout its range.

Argentine Angelshark

Comment 18: Similar to *Comments 16* and *17* above, the same commenter also disagreed with our determination that predation is not an operative threat to the Argentine angelshark, and argued that our determination is inconsistent with information presented in the status review for the species. The commenter pointed to the status review (Casselberry and Carlson 2015f), which said: ''studies of South American sea lion (*Otaria flavescens*) diet in Uruguay found that they consume Argentine angelsharks, particularly in Cabo Polonio.'' The commenter contends that although predation by a native predator would typically not cause the extinction of a prey species under natural conditions, Argentine angelshark populations are already depleted and subjected to additional threats. As a result, any additional mortality will exacerbate the threats that they are already subjected to. The commenter concluded that predation by this sea lion species is causing cumulative and synergistic impacts to Argentine angelsharks that are exacerbating the other threats that they are facing.

Response: We acknowledge that the information from the status review confirms that Argentine angelsharks are a prey item of the South American sea lion, and we considered this information in the proposed rule; however, the commenter provided no new information regarding predation rates of Argentine angelsharks elsewhere throughout its range or how predation is having negative population-level effects on the species. Thus, the statement from the commenter that predation by South American sea lions is causing cumulative and synergistic impacts to the species is speculative. Therefore, based on only one study from the status review (Szteren 2006), which found predation of Argentine angelsharks in only one of four study areas in Uruguay (Cabo Polonio), we maintain our previous conclusion in the proposed rule that predation is not likely a significant contributing factor to the species' extinction risk throughout its range.

Inadequacy of Existing Regulatory Mechanisms

General Comments Applicable to Multiple Species

Comment 19: One commenter asserted that the references to Argentina's FAO NPOA-sharks was only mentioned tangentially and incompletely. The commenter asserts that the results of the plan are published and communicated to the relevant multilateral FAO forums who are satisfied with the achievements thus far. In terms of monitoring and implementation of the FAO NPOA-sharks, the commenter noted that the Technical Advisory Group (TAG), which monitors and reviews the plan, filed a proposed update, which was approved by the Federal Fisheries Council, the body responsible for the establishment of the national fisheries policy in Argentina.

Response: We have reviewed the most recent documents related to Argentina's FAO NPOA-sharks mentioned by the commenter. The update to the FAO NPOA-sharks was approved in 2015 (ACTA CF No. 42/2015) and specifically revised the objectives and actions set forth in Chapter IV of the 2009 plan. We also reviewed the proceedings from the TAG workshop held to review and update the FAO NPOA-sharks (TAG 2015), and while it provided progress on the actions and goals outlined in Argentina's FAO NPOA-sharks, it did not provide any information specific to informing the status of any of the proposed species, or evidence of the adequacy of these actions in protecting these species. In one section of the report, it documents the number of *M. schmitti* and angelshark individuals found at two ports during sampling by El Instituto Nacional de Investigación y Desarrollo Pesquero (INIDEP) from 2013–2015; however, without additional information on sampling design or methods, we have no way of interpreting the results. Based on the proposed goals and actions, and progress towards these goals, it is clear that gaps in knowledge about many of the chondrichthyan species in Argentine waters exist, but that these gaps will hopefully be filled in the foreseeable future. However, at this time, this information does not change our conclusions regarding the status of any of the proposed species. In fact, the workshop report notes that one of the actions in the FAO NPOA-sharks is to establish criteria to categorize the conservation status of the different species of chondrichthyans in the Argentine Sea, with the first application of this to the priority species listed in the FAO NPOA-sharks, including *Squatina* spp. and *M. schmitti.* However, it was noted that no progress has been made on this action, but that a plan to figure out the allocation of funds for this action was suggested in 2016.

Comment 20: One commenter provided a list of research surveys from which the results were used to evaluate the closure areas that have been established for *M. schmitti* and *S. guggenheim* in waters of Argentina and the AUCFZ. Additionally, the commenter provided a list of Argentina's regulations pertinent to fisheries operating in the ''El Rincón'' area as well as regulations pertaining to recreational fishermen.

Response: In terms of the list of research surveys, we were not provided the actual data or results from these surveys (only the year of the survey, type, area of operation, season, month, and number of sets were provided) and, thus, we could not evaluate the relevance of these surveys to informing our determination of the status of either the narrownose smoothhound or spiny angelshark. While we acknowledge that Argentina is actively working on the implementation of its FAO NPOA-sharks, and currently regulates its fisheries through a number of management measures, including closure areas to protect chondrichthyans, the adequacy of these measures in controlling the threat of overutilization to the proposed species is still uncertain. It is not clear, from the information provided by the commenter, if these regulations have improved the status of any of the proposed species. Based on the best available information for the species found in Argentinean waters, including population data, demographic risks, and current exploitation rates, it appears that they face either moderate or high risks of extinction. Further discussion of the data informing this extinction risk analysis can be found in the proposed rule as well as the Summary of Factors Affecting the Six Species and Extinction Risk sections of this final determination.

Comment 21: One commenter stated that total permitted catches in Argentine waters and the AUCFZ are set both nationally and within the framework of the Comisión Técnica Mixta del Frente Marítimo (CTMFM), respectively. The commenter further noted that catch limits are based on the advice from the TAG, which uses information from research surveys and fishery statistics to develop stock assessment models and propose management options using a precautionary approach. The commenter references a list of research surveys conducted since 2006 that they assert was not considered in the proposed rule.

Response: We note that the TAG considers the available data, including the referenced research surveys, when it develops stock assessment models and provides advice to the CTMFM. At the time of the proposed rule, we did not have access to the latest documents from the TAG or CTMFM (or the results from the referenced research surveys). However, since publication of the proposed rule, we have received new data from the CTMFM, including recent TAG reports and stock assessment models that show trends in landings, CPUE, and biomass of the narrownose smoothhound and spiny angelshark in the AUCFZ, and have revised the discussion concerning the threats to these species and their current extinction risk. This new discussion can be found below in the sections Summary of Factors Affecting the Six Species and Extinction Risk.

Comment 22: One commenter stated that the proposed rule did not consider the CTMFM Resolution No. 10/2000, which prohibits vessels over 28 meters (m) in length from operating in the coastal area to the isobath 50 m deep within the AUCFZ. The commenter asserted that this resolution has had a positive impact on reducing fishing effort for the proposed species in the AUCFZ.

Response: While we agree that this prohibition has likely reduced fishing effort on the species within the AUCFZ somewhat, the extent of the reduction largely depends on the species. For example, this prohibition would have no effect on fishing effort for *S. argentina,* whose depth ranges from 100 m to 400 m. For *S. guggenheim,* Hozbor and Pérez (2016) note that the fleet comprised of boats 18–25 m in length, which would not fall under this prohibition, mostly operate in the depth stratum where *S. guggenheim* would occur, and were responsible for over 50 percent of the landings of the species from 2000–2015. The narrownose smoothhound shark, *M. schmitti,* is found in up to 120 m depths in Argentina, and, therefore, may still be subject to fishery-related mortality by these larger vessels. Based on new information received since publication of the proposed rule on the trends in landings, CPUE, and biomass of narrownose smoothhounds and spiny angelsharks in the AUCFZ, and the adequacy of existing regulatory measures, we have since re-evaluated the extinction risk of both species (see sections Summary of Factors Affecting the Six Species and Extinction Risk).

Based on the results, we do not find that the above prohibition has likely reduced mortality on either of these species to the point where they would not warrant listing under the ESA.

Comment 23: One commenter noted that the Argentine industrial fleet operates satellite monitoring systems that report the position of each vessel every hour. The commenter elaborated that the global positioning information of the fleet is published on the Web site of the Ministry and is updated every 12 hours, demonstrating absolute transparency and also the effective control of closed areas. Additionally, the commenter notes that this information is integrated in a way that allows the issuance of legal catch documents, which are requested by exporters to be presented to customs authorities.

Response: While we thank the commenter for this information, we do not find that it changes our conclusions regarding the threats to the proposed species, or their respective overall risks of extinction.

Comment 24: One commenter, citing Bornatowski et al. (2014), Barreto et al. (2015), Amaral and Jablonski (2005), and Ricardo-Pezzuto and Mastella-Beninca (2015), asserted Brazilian regulatory measures are inadequate to protect any of the proposed species. Specifically, the commenter states that monitoring of both commercial and artisanal fisheries in Brazilian waters is insufficient due to a lack of monitoring capacity and data. Furthermore, the commenter asserted that instead of making serious efforts to improve protections for sharks and decrease overfishing, Brazil has taken several actions that will have the opposite effects, including ending its observer program and creating favorable conditions to allow fishing fleets to expand in the area. The commenter claims that protected areas are insufficient in number and extent, and that management plans have not been implemented or are lacking altogether for some of these areas, with attempts at shark protections met with strong opposition from the fishing industry. Additionally, the commenter mentioned that trawling licenses in Brazil allow their holders to catch and retain dozens of species, both target and non-target, with the fleets authorized to catch many species that are not in their licenses. Citing the narrownose smoothhound status review (Casselberry and Carlson 2015c), the commenter noted that at least one population of narrownose smoothhounds may have been extirpated in Brazil as a result of overfishing and concluded that overfishing in this country has the ability to extirpate other populations as well.

Response: We agree with the commenter that overutilization and inadequate existing regulatory measures are threats to the proposed species within Brazilian waters. These threats have been thoroughly considered and discussed in the proposed rule and have led to our listing determinations. We reviewed the papers mentioned by the commenter and find that these papers do not present new information specific to any of the proposed species that was not already considered or would change our prior conclusions regarding threats to these species.

Comment 25: One commenter agreed with our evaluation of the adequacy of existing regulatory measures in Uruguay. The commenter, citing Barreto et al. (2015), stated that there is a general scarcity of fishing statistics from Uruguay and that the lack of information and effective regulation in the face of exploitation has caused elasmobranchs to decline in Uruguayan waters. The commenter asserted that protections for the proposed species in Uruguay are likely to be inadequate until conservation is prioritized as a political matter and the protections in Uruguay's FAO NPOA-sharks are strengthened. The commenter concluded that all of the proposed shark species that are present in Uruguayan waters are thus threatened by inadequate regulatory measures.

Response: We thank the commenter for the comment and note that a thorough discussion and analysis of the adequacy of existing regulatory measures in Uruguay and the other portions of the proposed species' ranges can be found in the proposed rule as well as in the Summary of Factors Affecting the Six Species and Extinction Risk sections of this final rule.

Comment 26: The same commenter from *Comment 25* agreed with our evaluation of the inadequacy of Argentina's existing regulatory measures, asserting that Argentina's catch records are inaccurate and that any regulatory mechanisms based on those figures are therefore unreliable. The commenter cited a study done by Villasante et al. (2015), which reconstructed total marine fisheries removals in Argentina's Exclusive Economic Zone from 1950–2010 to provide estimates of unreported components of fisheries catch in various sectors. Villasante et al. (2015) found that reconstructed catch was 55 percent higher than FAO reported landings. The commenter asserted protections for the proposed species in Argentina are likely to be inadequate until conservation is prioritized as a political matter and the protections in Argentina's FAO NPOA-sharks are strengthened.

Response: We thank the commenter for the comment and note that a thorough discussion and analysis of the adequacy of existing regulatory measures in Argentina and the other portions of the proposed species' range can be found in the proposed rule as well as in the Summary of Factors Affecting the Six Species and Extinction Risk sections of this final rule.

Comment 27: One commenter disagreed with the statement from the proposed rule (80 FR 76091; December 7, 2015) that cited McCormack et al. (2007) as evidence that total allowable catch limits, minimum sizes, and annual quotas for elasmobranchs are largely ignored and poorly enforced in Argentina. The commenter stated that in Argentina, there has been progress in the last 15 years in the study of these species, in optimizing data collection, and in personnel training to conduct research, but also for the control and monitoring of landings and adherence to management measures. The commenter stated these efforts have increased since the implementation of Argentina's FAO NPOA-sharks in 2009. The commenter also noted that total allowable catches (TACs) in Argentina are not theoretical but established by the authorities on the basis of the best scientific advice and are monitored and enforced by authorities of Argentina and the CTMFM.

Response: While we agree with the commenter that efforts to conserve sharks have increased in Argentina since 2009, and find that the information provided by the commenter suggest current management measures are enforced by authorities of Argentina and the CTMFM, we note that the existing regulatory measures, including TACs, may not be adequate to prevent further declines in the the proposed species. Based on new information received since publication of the proposed rule, including data showing trends in landings, CPUE, and biomass of narrownose smoothhounds and spiny angelsharks in the AUCFZ, as well as information regarding TACs for these species and the adequacy of existing regulatory measures, we have since re-evaluated the extinction risk of both species. This discussion can be found in the sections Summary of Factors Affecting the Six Species and Extinction Risk below.

Comment 28: One commenter asserted that another major regulation that was not considered in the proposed rule was the implementation of a

maximum allowance of landed chondrichthyes per fishing trip in Argentina. The commenter noted that presently, the CTMFM (Resolution 09/2013) and the Federal Fisheries Council of Argentina have implemented regulations that state that landings of rays and sharks may not be more than 30 percent of the total landings per trip. The landings of chondrichthyes may not be more than 50 percent of the total landings per trip. The commenter referenced a paper by Monsalvo et al. (2016) to indicate an adherence to this regulation by the Argentine fleet and asserted that the implementation of the management action, together with other chondrichthyan-specific regulations (including bans and TACs), have reduced fishing pressure on *M. schmitti* and *S. guggenheim.* The commenter concluded that it is wrong to assume that the decline in catches of these two species unfailingly indicates a decrease in abundance, but rather is due to the implementation of stringent management measures that were established with the explicit aim of reducing catches through reduction of effort directed on these species.

Response: As mentioned previously, based on new data we received since publication of the proposed rule that shows trends in landings, CPUE, and biomass of the narrownose smoothhound and spiny angelshark in the AUCFZ, we have re-evaluated our extinction risk analyses for these two species. We note that the models upon which the new information is based took into account the impacts of management measures, including Resolution 09/2013, in estimating biomass and abundance trends (see Cortés et al. 2016a and 2016b). Based on this new information, we agree with the commenter that management measures may have slowed the decline in the abundance of these two species (by reducing fishing effort and restricting catches); however, we find that existing regulatory measures are not adequate to prevent further declines in the species. We direct the commenter to our discussion of threats and evaluation of the extinction risk of these two species in the sections Summary of Factors Affecting the Six Species and Extinction Risk below.

Comment 29: One commenter noted that we did not identify *Squatina* spp. as one of the priority species in Argentina's FAO NPOA-sharks.

Response: We thank the commenter for this information and acknowledge that Argentina's FAO NPOA-sharks does include *Squatina* spp. in the list of priority species that are commercially exploited in Argentine waters.

Comment 30: One commenter asserted that Argentinean and Uruguayan fishing authorities are not serious about protecting angelsharks. The commenter pointed to the practice of setting catch limits by the CTMFM. Specifically, the commenter noted that the CTMFM set a catch limit of 2,600 tons in 2012 for *Squatina* spp. within the AUCFZ. This catch limit was met, and in response to this, an additional reserve of 400 tons was proposed in 2013 in the event that the 2,600-ton limit was reached again. The commenter noted that this was followed by a 10 percent increase that could be added to the 2,600-ton limit if the limit was reached in 2014 and 2015. The commenter asserted that this malleability of the catch limit begs the question of why have a limit at all if the government's response is to raise the limit once it is reached.

Response: We note that the commenter provides only opinion regarding the effectiveness of the CTMFM catch limits on the status of the species. Since publication of the proposed rule, we have received new information on the adequacy and effectiveness of the CTMFM imposed catch limits for *M. schmitti* and *S. guggenheim* and have re-evaluated the extinction risks of these two species. This discussion can be found in the sections Summary of Factors Affecting the Six Species and Extinction Risk below.

Narrownose Smoothhound Shark

Comment 31: One commenter mentioned a tagging mark-recapture program for narrownose smoothhound sharks, which was carried out jointly with artisanal fishermen in the southern region of the Province of Buenos Aires. The commenter notes that the results of this activity are presented in Pérez et al. (2014).

Response: While we find that tagging work will be useful in contributing valuable data for *M. schmitti* within Argentine waters, the paper referenced only provides results from a preliminary study that analyzed the problems currently associated with mark-recapture studies in Argentina, which the authors of the study state is a country with practically no experience in this technique. The paper discusses the outreach involved in the reporting process and issues with the lack of precision in recapture positions. However, after reviewing the paper, we do not find that the information provided changes any of our conclusions regarding the status of the narrownose smoothhound.

Comment 32: One commenter stated that we did not include the ''best available information'' in relation to the status of *M. schmitti.* The commenter recommended that we check the CTMFM Web site for recent information, including stock assessments and regulatory measures, related to the status of this species.

Response: Prior to publication of the proposed rule, we considered the publicly available information from the CTMFM Web site when we evaluated the status of *M. schmitti.* We have since been in correspondence with the CTMFM and received new data showing trends in landings, CPUE, and biomass of the narrownose smoothhound and have revised the discussion concerning the threats to this species and its current extinction risk. This new discussion can be found below in the sections Summary of Factors Affecting the Six Species and Extinction Risk.

Striped Smoothhound

Comment 33: One commenter, citing Tinidade-Santos and Freire (2015), stated that Brazilian fisheries managers rely, in part, on minimum landing sizes based on fishes' sizes at first maturity for managing fisheries, and that minimum landing size is the only fishery control used for 48 species in Brazil. The commenter quoted a section from Tinidade-Santos and Freire (2015), which noted that the current minimum landing size for *M. fasciatus* in Brazil would not allow it to reproduce at least once in its lifetime. The commenter states that removing individuals before they have reproduced risks imminent population collapse and that Brazil's failure to adequately limit catch of immature individuals is another threat to the elasmobranchs in its waters.

Response: We agree that fishing for *M. fasciatus* before it has reached maturity has serious implications for its long-term survival. In the proposed rule, we note that the constant fishing pressure on *M. fasciatus* in Brazil's coastal commercial and artisanal fisheries affects the recruitment of juvenile sharks into the population and has contributed to significant declines in neonate and juvenile populations. We specifically state, ''Thus, the intense fishing effort by the commercial and artisanal fisheries on the Plataforma Sul appear to be negatively affecting the reproductive capacity and growth of the population throughout its range,'' with this information contributing to our determination to list the species as endangered throughout its range. As the commenter provides no additional information on any of the other proposed species, our conclusions

regarding threats to these species in Brazilian waters remain the same.

Spiny Angelshark

Comment 34: One commenter highlighted the statement in the proposed rule regarding the declining catch of *S. guggenheim* in Santa Catarina, Brazil: ''in 2004, landings of *S. guggenheim* along with *S. occulta* were prohibited and, as such, the decline in landings data after 2004 may be a reflection of this prohibition'' (80 FR 76098; December 7, 2015). The commenter asserted that the decline in catch is more likely indicative of further population decline or decreased reporting as fisheries regulations are commonly ignored in Brazil and the observed large declines are not consistent with even negligible compliance with fisheries regulations.

Response: The commenter does not provide any new information to consider, besides their opinion, in regards to the cause of the decline in landings of the species. We note in the proposed rule that the best available information indicates *S. guggenheim* has undergone substantial population declines in Brazilian waters, ''with evidence of negative population growth rates that led to significant decreases in the overall abundance of the species to the point where catch rates and observations of spiny angelsharks are extremely low'' (80 FR 76098). We also concluded that the fishing effort (both by trawl and gillnet fleets) is high and poorly regulated, with the present level of fishing effort by the artisanal and industrial fisheries on Brazil's continental shelf likely to lead to further declines in the spiny angelshark population. A comprehensive discussion of the threats to *S. guggenheim* within Brazilian waters may be found in the proposed rule.

Comment 35: One commenter advised us to not place much weight on the protective ability of seasonal fishing bans in Uruguay that are designed to protect other species, but that may also provide some protection to the spiny angelshark based on overlap with the species' habitat. The commenter asserted that these regulations do not cover the entire habitat of the species and could be amended at any time irrespective of the status of the spiny angelshark, as they are based on protecting other species.

Response: While the commenter is correct that the seasonal bans do not cover the entire spiny angelshark habitat, the commenter provided only opinion and speculation regarding the effectiveness or adequacy of these seasonal fishing bans in Uruguay in relation to protections for the spiny angelshark. Since publication of the proposed rule, we have received new information on the adequacy of existing regulatory measures to protect *S. guggenheim* from threats and have re-evaluated the extinction risk of this species. This discussion can be found in the sections Summary of Factors Affecting the Six Species and Extinction Risk below.

Argentine Angelshark

Comment 36: The same commenter from *Comment 32* above also stated that we did not include the ''best available information'' in relation to the status of *S. argentina* and recommended the CTMFM Web site for more information.

Response: Prior to publication of the proposed rule, we considered the publicly available information from the CTMFM Web site when we evaluated the status of *S. argentina.* Since the publication of the proposed rule, we have not received any new information regarding the status of this species, or found any newly available information on the CTMFM Web site, nor does the commenter provide any new data to consider. As such, we maintain our previous conclusion in the proposed rule that the Argentine angelshark is presently at a high risk of extinction throughout all of its range.

Comments on Demographic Risks to the Species

Brazilian Guitarfish

Comment 37: One commenter asserted that a study by De-Franco et al. (2012) appears to have additional Brazilian guitarfish decline data that we did not consider in our proposed rule, and suggested that we should consider this information in our final listing decision for the species.

Response: We reviewed and considered the De-Franco et al. (2012) study in our proposed listing determination for the Brazilian guitarfish. In fact, we cited this study to support our conclusion that regulatory mechanisms are likely inadequate for the species in Brazil, which, in turn, supported our proposal to list the species as endangered. Upon re-reviewing De-Franco et al. (2012), we note that Miranda and Vooren (2003) is cited as evidence that *R. horkelii* populations declined by approximately 85 percent in the state of Rio Grande do Sul between 1985 and 1997. Our proposed rule discussed this information in detail in the *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* section where we stated that ''Based on the CPUE trends, abundance of *R. horkelli* on the Plataforma Sul in depths of 20 m–200 m is estimated to have decreased by about 85 percent between 1975 and 1999 (Vooren *et al.* 2005a)'' (80 FR 76077; December 7, 2015). Therefore, we disagree with the commenter that we did not consider the Brazilian guitarfish decline data provided in De-Franco et al. (2012), as that information was covered in detail in the proposed rule and contributed to our proposed endangered listing determination for the Brazilian guitarfish.

Narrownose Smoothhound

Comment 38: One commenter stated that our analysis of productivity as a demographic threat to the narrownose smoothhound is flawed. The commenter noted that although we determined that the narrownose smoothhound has a ''relatively high intrinsic rate of increase,'' the commenter asserted that the species still has a low rate of increase that will make it more susceptible to decline and less able to recover from overexploitation than an r-selected species. The commenter believes that this information should elevate the threat that overfishing poses to the species.

Response: While we agree with the commenter that the narrownose smoothhound ultimately has a low intrinsic rate of increase compared to ''r-selected'' species, we still maintain that there is a gradient of productivity levels among shark species that help determine the level of exploitation that can be sustainable. As described in the proposed rule, *M. schmitti* is able to withstand higher levels of exploitation than other shark species, with sustainable exploitation rates equivalent to an annual removal rate of about 10 percent of the population (Cortés 2007). With no new information provided by the commenter, we find that there is no evidence that the species' productivity is leading to depensatory processes that would elevate its extinction risk; therefore, while low productivity inherently increases its risk, we have no evidence to suggest that it is currently placing the species in danger of extinction.

Spiny Angelshark

Comment 39: One commenter suggested that we should consider the extent to which the spiny angelshark populations are genetically isolated, and the extent to which this increases their extinction risk by reducing redundancy and reducing the ability of the species to decrease the effects of removals through migration.

Response: The commenter provides no new information on the genetics or population structure of the species. As mentioned in the proposed rule, we considered the demographic factors of abundance, growth rate and productivity, spatial structure and connectivity, and diversity, which reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk. We note that the species faces significant demographic risks, including extremely low fecundity, declining population growth rate, and limited connectivity. As the commenter did not provide any new genetic or population structure data to consider in our demographic analysis, our discussion regarding the species' demographic risks specifically from spatial structure and connectivity and diversity remains the same. However, we have since revised our extinction risk analysis for the species based on new information received since the publication of the proposed rule, and this discussion can be found in the section Extinction Risk below.

Argentine Angelshark

Comment 40: One commenter asserted that the relative rarity of the Argentine angelshark represents an additional threat to the species as it ''. . . may not have the redundancy necessary to mediate against overutilization.'' The commenter then cited to the proposed rule and stated: ''This is exacerbated by the fact that the species appears unable to move between populations, indicating that reductions will likely not be mediated by migrating individuals and that extirpations are therefore more likely.''

Response: We considered the relative rarity of the Argentine angelshark as well as its spatial structure and connectivity in the *Demographic Risk Analysis—Abundance* and *Spatial Structure/Connectivity* sections of the proposed rule. These factors were also discussed and considered in the *Risk of Extinction* section of the proposed rule and contributed to the proposed endangered listing for the Argentine angelshark. As stated in the proposed rule, we note that given the species' restricted range and present rarity throughout its range, combined with its limited movement and dispersal between populations and low reproductive output, *S. argentina* is likely strongly influenced by stochastic or depensatory processes. This vulnerability is further exacerbated by the present threats of overutilization and inadequacy of existing regulatory measures that are and will continue to significantly contribute to the decline of the existing populations (based on the species' demographic risks), compromising the species' long-term viability. Therefore, without any new information from the commenter, we disagree that the species' relative rarity should be re-evaluated as a separate threat to the species, as it was already thoroughly evaluated in the proposed rule.

Comments Outside of the Scope of the Proposed Rule

Comment 41: One commenter noted that the proposed species have not been included in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) appendices, and, as such, efforts should be made in this multilateral forum before listing under the ESA. In this regard, the commenter noted that the United States should consider the impacts of the proposal on developing countries, including any restrictions on commercial exports, and consult with the countries where these species occur.

Response: Under the ESA, we are required to determine whether a species is endangered or threatened based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any State or foreign nation to protect the species. We cannot consider economic impacts when making listing determinations. In addition, the standards for listing species in the CITES appendices are separate from the standards for listing species under the ESA. While we work with the U.S. Fish & Wildlife Service (USFWS) to carry out the provisions of CITES, providing guidance and scientific support on marine issues and participating fully in the implementation of CITES for species under our jurisdiction, the listing of species on the CITES appendices is not a prerequisite for listing under the ESA. Furthermore, ESA listing will not restrict export of the six species from their range countries. Section 9(a)(1) restricts, among other things, only import into and export from the United States by persons subject to U.S. jurisdiction. It does not regulate import into or export from other countries. In terms of consulting with foreign nations where the proposed species occur, and as required by ESA Section 4(b)(5)(B), we gave notice of and directly solicited comments on our proposal from the foreign ambassadors of each country in which the six species are believed to occur. We received a response only from the Embassy of the Argentine Republic.

Comment 42: One commenter requested that we amend the proposal to use the double nomenclature ''Islas Malvinas'' and ''Falkland Islands'' in our reference to the Falkland Islands within the 12-month finding for the graytail skate (*Bathyraja griseocauda*) (80 FR 76067; December 7, 2015), noting the dispute between the government of Argentina and the United Kingdom concerning the sovereignty over the archipelago.

Response: We acknowledge the double nomenclature, but find an amendment to change the 12-month finding text for a species not included in this final rule to be unnecessary as no official regulation, nor regulatory text, containing the incomplete nomenclature was implemented or published in our U.S. Code of Federal Regulations as a result of the 12-month finding.

Summary of Changes From the Proposed Listing Rule

Based on public comments and new information received since the publication of the proposed listing rule, we made the changes listed below.

1. We re-evaluated threats to the species and the extinction risk of the narrownose smoothhound shark based on new information and have determined that the species remains at a moderate risk of extinction.

2. We re-evaluated threats to the species and the extinction risk of the spiny angelshark based on new information and have determined that the species is presently at a high risk of extinction.

3. We also revised the common names of the proposed *Squatina* species to reflect ''angelsharks'' as a single word (in the proposed rule, we referred to them as ''angel sharks''). We find that either spelling is acceptable; however, because we have previously listed three other ''angelshark'' species under the ESA (81 FR 50394; August 1, 2016), in order to be consistent, we are following the same naming convention for the angelshark species addressed in this final rule.

A summary of the new information received since the publication of the proposed rule as it relates to the status of the narrownose smoothhound and spiny angelshark is presented in the remainder of this document, along with our re-evaluation of the extinction risk of these two species based on this new information and our final listing determinations for all six elasmobranch species. None of the information received since publication of the proposed rule causes us to reconsider our previous findings for the other four elasmobranch species as reflected in the

proposed rule. Thus, all of the information contained in the status review reports and proposed rule for the daggernose shark, Brazilian guitarfish, striped smoothhound shark, and Argentine angelshark is reaffirmed in this final action.

Species Determinations

We did not receive any new information related to taxonomic status of any of the six elasmobranch species. Therefore, based on the best available scientific and commercial information described in the proposed rule (80 FR 7606, December 7, 2015) and included in the status review reports (Casselberry and Carlson 2015 a–f), we find that the daggernose shark (*I. oxyrhynchus*), Brazilian guitarfish (*R. horkelii*), striped smoothhound shark (*M. fasciatus*), narrownose smoothhound shark (*M. schmitti*), spiny angelshark (*S. guggenheim*), and Argentine angelshark (*S. argentina*) are taxonomically-distinct species, meeting the definition of ''species'' pursuant to section 3 of the ESA, and are eligible for listing under the ESA.

Summary of Factors Affecting the Six Species

Next we consider whether any one or a combination of the five factors specified in section 4(a)(1) of the ESA contribute to the extinction risk of these species and result in the species meeting the definition of ''endangered species'' or ''threatened species.'' The comments that we received on the proposed rule provided information that was either already considered in our analysis or was not substantial or relevant, and, therefore, did not change our analysis of or conclusions regarding any of the section 4(a)(1) factors or their interactions for the daggernose shark (*I. oxyrhynchus*), Brazilian guitarfish (*R. horkelii*), striped smoothhound shark (*M. fasciatus*), and Argentine angelshark (*S. argentina*). Therefore, all of the information, discussion, and conclusions on the summary of factors affecting these four elasmobranch species contained in the status review reports and proposed rule is reaffirmed in this final action.

For the narrownose smoothhound and spiny angelshark, below we provide a summary and analysis of the new information received since publication of the proposed rule (and not already discussed in the response to public comments) on the threats to these two species.

Narrownose Smoothhound

As noted in the proposed rule, the narrownose smoothhound is the most abundant and widely distributed triakid (houndshark) in the Argentine Sea (Van der Molen and Caille 2001). In Argentina, *M. schmitti* is considered the most important elasmobranch in Argentine fisheries, making up 9–12 percent of the total landings from coastal fleets (Galíndez *et al.* 2010), and is the most heavily exploited shark species in artisanal fisheries. Cortés et al. (2016a) note that the shark is generally found in greater abundance in the estuarine systems of El Rincón and the Río de la Plata, where it is mainly captured by the Argentine multi-species coastal fleet. In Uruguay, the species is the target of the artisanal gillnet fishery and incidentally caught by the artisanal and industrial trawl fleets operating in the Atlantic Ocean, including within the AUCFZ.

In terms of factors affecting the status of the narrownose smoothhound, the proposed rule concluded that the main threat to this species is overutilization for commercial purposes, with current regulatory measures inadequate to protect the species from further overutilization. The proposed rule provided data on the decline in both the CPUE and biomass of the species throughout its range due to fishing pressure. Additionally, the proposed rule noted a decrease in the estimated mean size and size at maturity of narrownose smoothhounds off the coast of Argentina since the 1970s, providing further evidence of the overexploitation of the species.

Since publication of the proposed rule, we received updated and new information related to the trends in landings, CPUE, and biomass of the narrownose smoothhound specifically in the AUCFZ (*i.e.,* Río de la Plata and Maritime Front). As the proposed rule notes, the AUCFZ is the area where current fisheries information indicates narrownose smoothhounds may likely be most abundant but also heavily targeted. The available data at the time of the proposed rule showed that landings of the species in the AUFCZ decreased in recent years, from 4,480 t in 2010 to 2,921 t in 2014 (CTMFM 2015). Although annual catch limits for *M. schmitti* have been implemented in the AUCFZ by the CTMFM since 2002, the proposed rule noted that ''Due to a lack of abundance data since 2003, it is unclear whether the catch limits for *Mustelus* spp. have positively affected the population . . . though it is worth noting that since 2010, catches of *M. schmitti* in the AUFCZ have been below the total allowable levels and on a decline (CTMFM 2015).'' Based on new information received from the CTMFM, biomass of the species in 2016 is estimated to be around 53 to 64 percent of virgin (*i.e.,* 1983) biomass (CTMFM 2016). These values are based on three models from Cortés et al. (2016a) that incorporated indices of abundance estimated from INIDEP research surveys and Argentine commercial fleet data and annual landings data of *M. schmitti* by Uruguayan and Argentinean vessels in the AUCFZ. While all models showed a general decline in biomass since the late 1980s, in recent years, biomass has appeared to stabilize and even increase (Cortés et al. 2016a). Since 2013, when management measures were implemented in the AUCFZ that set maximum catch limits per trip for sharks, rays, and chondrichthyans (see Resol. CFP 04/2013 and Resol. CTMFM 09/2013), biomass of *M. schmittti* declined by less than 1 percent in two of the models examined, and increased by 2.6 percent in the third model. However, based on our interpretation of the available information, we find that annual catch limits specifically for *M. schmitti* are currently set too high. For each model, Cortés et al. (2016a) provide an estimate of the ''replacement capture'' for each year, which the authors define as the catch value that would produce stable biomass from time t to time $t + 1$. Since 2012, when the CTMFM began setting species-specific total permissible catch limits for narrownose smoothhound, these catch limits have always been higher than the replacement capture estimates. Most recently, the 2016 annual catch limit set by the CTMFM was 3,500 t despite replacement capture estimates that range from 2,568 t to 3,163 t. As such, these annual catch limits appear inadequate to ensure stable biomass numbers for *M. schmitti* into the future. Yet, as mentioned above, the models in Cortés et al. (2016a) depict stable and increasing biomass trends for the species. These trends are likely explained by the fact that actual landings of the species have been close to and even below the replacement capture estimates since 2012, and while these landings figures may potentially indicate a decrease in the overall abundance of the species and, therefore, catchability of the species, modeled CPUE trends suggest otherwise, showing a slight decrease since the mid-2000s and no trend (or stable trend) in recent years (Cortés et al. 2016a). However, the authors caution that considering the susceptibility of the species to exploitation, the previous overexploitation of the species, and the uncertainty of the data available for the models, management of the species should be established using a highly

precautionary approach (Cortés et al. 2016a).

Additionally, while the proposed rule noted a chronological decrease in the estimated size of maturity of narrownose smoothhounds in the AUCFZ and El Rincon regions, indicative of overutilization of the species, new information suggests that average maturity size may either vary by site or has potentially increased again in recent years. Specifically, the proposed rule reported maturity estimates of 60 centimeters (cm) and 62 cm total length (TL) for males and females, respectively, in 1978 and noted that by 1998, maturity estimates had decreased to 57.6 cm TL for males and 59.9 cm for females (80 FR 76087; December 7, 2015). Based on individuals caught in 2004, Cortes (2007) found the length at 50 percent maturity (LT50) for females to be only 56 cm TL. However, de Silveira et al. (2015) collected samples of narrownose smoothhounds from artisanal fisheries in La Paloma (Rocha) during the years 2014 and 2015 and determined that LT50 for males was 60.2 cm TL (n = 431) and for females it was 61 cm TL (n = 280), estimates that match those that were recorded from over three decades ago. Given this new information, along with the indication of a potentially stable population, we find that the threat of overutilization within the AUCFZ may have been overstated in the proposed rule.

In terms of other threats, the proposed rule noted the inadequacy of existing regulatory mechanisms to control overexploitation of the species throughout large portions of its range, including within the AUCFZ. However, the proposed rule mentioned measures in the AUCFZ that were likely effective in protecting the narrownose smoothhound, including a prohibition of demersal trawling in a section known to be an important area for chondrichthyan reproduction (referred to as statistical rectangle 3656) and additional area closures to trawling gear in other portions of the AUCFZ, like within the Río de la Plata (where historical estimates of narrownose smoothhound were as high as 44 t/nmi^2; Cousseau et al. 1998), in order to protect whitemouth croaker (*Micropogonias furnieri*) and juvenile hake from overexploitation by the fisheries.

Since publication of the proposed rule, we received new information regarding the likely effectiveness of the prohibition in 3656 as it pertains to the protection of narrownose smoothhound. For clarification, the boundaries of 3656 are defined as follows: (A) To the north by the parallel 36° S. and its intersection with the outer limit of the Rio de la Plata; (B) to the south, by the parallel 37° S.; (C) to the west, by the outer limit of the Argentine territorial sea; D) to the east, by the meridian 56°00′ W. Specifically, Colonello and Massa (2016) analyzed data from coastal research surveys conducted between 2011 and 2015 to examine the spatial distribution and relative abundance, including life history stages, of a number of shark and ray species within and around the 3656 closure. The surveys covered coastal areas of Buenos Aires and Uruguay up to 50 m depths. Results confirmed the presence of both sexes and all life history stages of *M. schmitti* within the 3656 rectangle (Colonello and Massa 2016). In the spring surveys (conducted in November and December), sets frequently showed high densities of narrownose smoothhound (greater than 2 t/mn^2 (tonnes per square nautical mile)), including within the 3656 closure (Colonello and Massa 2016). The authors note that the highest concentrations of adult males and adult non-pregnant and pregnant females in the spring surveys were observed in shallow areas, supporting the assumption these areas are used for reproductive purposes (Colonello and Massa 2016). However, as the most coastal zone of the 3656 rectangle is controlled by the Province of Buenos Aires (Argentine territorial waters), the authors stress the need to ensure the full synchronicity of the closure of both the 3656 area and the Provincial part of the rectangle. This is particularly important since the Colonello and Massa (2016) data show that during the months when this does not occur (*i.e.,* November and December), there is a redistribution of fishing effort specifically within the open Provincial coastal areas of 3656 (and in neighboring areas next to the closed areas of 3656) (Colonello and Massa 2016). Thus, while we find that the 3656 closure is adequate in providing a high degree of protection from fishery-related mortality for the narrownose smoothhound during important reproductive events, we note that the species is capable of moving in and out of this closure area and that all life history stages are found outside of the closure area and, therefore, juveniles and reproducing adults are still susceptible to being caught by fishing vessels. Additionally, when the Provincial area is also open, this significantly decreases the overall effectiveness of the closure in protecting sensitive life history stages of species from fishery-related mortality.

As we have no new information on threats to the species outside of the AUCFZ, our conclusions from the proposed rule regarding threats to the species within Argentinean and Uruguayan waters outside of the AUCFZ, and Brazilian waters, remains the same.

Spiny Angelshark

As noted in the proposed rule, spiny angelsharks are found from Brazil to Argentina. Throughout its range, the species is heavily fished by commercial and artisanal fishermen; however, according to Cortés et al. (2006b), more than 80 percent of the landings of *S. guggenheim* correspond to catches between 34° S. and 42° S. latitudes, at depths less than 50 m. In Argentina, the spiny angelshark is commercially exploited in local fisheries that occur in the San Matías Gulf (Perier et al. 2011), which comprises around 10 percent of its range. The species is also commercially exploited by the fisheries operating in the AUFCZ, which overlaps with areas of higher concentration of the species (Jaureguizar et al. 2006; Colonello et al. 2007; Massa and Hozbor 2008; Vögler et al. 2008) and comprises around 25 percent of the species' range. In Uruguay, spiny angelsharks are captured by industrial trawling fleets in coastal and offshore waters (Vögler et al. 2008), and in southern Brazil, spiny angelsharks have been heavily fished by industrial trawlers and gillnet fleets for the past few decades (Haimovici 1998; Vögler et al. 2008).

In terms of factors affecting the status of the spiny angelshark, the proposed rule concluded that the main threat to this species is overutilization for commercial purposes. The proposed rule provided data on the decline of the species in Brazil, noting that the impact of heavy fishing pressure on the species by trawlers and gillnet fleets since the 1980s resulted in an 85 percent decline in the abundance of the *S. guggenheim* population. Fishing mortality rates exceeded population growth rates, with an annual rate of population decline of 16 percent in the mid-1990s. In Argentina, the proposed rule cited CPUE data that showed population declines of up to 58 percent in the late 1990s, but reported a lack of recent abundance estimates or trends throughout the rest of the species range, particularly in the AUCFZ.

Since publication of the proposed rule, we received updated and new information related to the trends in landings, CPUE, and biomass of the spiny angelshark specifically in the AUCFZ. As the proposed rule notes, the AUCFZ comprises around one quarter of the species' range and is where survey data suggest the species is likely at

highest concentration. The available data at the time of the proposed rule showed that landings of the species in the AUFCZ decreased in recent years, from 3,763 t in 2010 to below 2,300 t in 2014 (CTMFM 2015). These catch levels are similar to those reported in the 1990s in Argentine waters, which resulted in declines of up to 58 percent in the species' abundance. Beginning in 2012, annual maximum permitted catch limits for all *Squatina* spp. (of which the large majority are *S. guggenheim*) have been implemented in the AUCFZ by the CTMFM; however, these limits have never been met since 2013. The proposed rule concluded that '' . . . without effort information, it is unclear whether these regulations and the corresponding decreases in landings can be attributed to adequate control of the exploitation of the species or rather reflects [*sic*] the lower abundance of the species from declining populations, or more likely a combination of the two scenarios'' (80 FR 76097).

Based on new information received from the CTMFM, biomass of the species in 2016 is estimated to be around 46 percent of optimum biomass for the species (CTMFM 2016). This value is based on two models from Cortés et al. (2016b) that incorporated indices of abundance estimated from INIDEP research surveys and annual landings data of angelsharks by Uruguayan and Argentinean vessels in the AUCFZ. The fishing mortality rate of *S. guggenheim* in 2016 was estimated to be 65 percent higher than the fishing mortality rate at maximum sustainable yield (Cortés et al. 2016b). Based on the estimates of biomass since the early 1980s, *S. guggenheim* biomass has declined by 77 to 81 percent (depending on the model) (Cortés et al. 2016b). Since 2013, when management measures were implemented in the AUCFZ that set maximum catch limits per trip for sharks, rays, and chondrichthyans (see Resol. CFP 04/2013 and Resol. CTMFM 09/2013), *S. guggenheim* biomass has declined by 14 percent (Cortés et al. 2016b). Additionally, abundance has been on a declining trend since the early 2000s (Cortés et al. 2016b). Likely a major contributing factor to these declines is the fact that landings of the species have been higher than estimated replacement captures since 2002 (Cortés et al. 2016b). Also, since 2012, when the CTMFM began setting total permissible catch limits for angelsharks, these maximum catch limits have always been higher than the replacement capture estimates. In fact, most recently, the 2016 annual catch limit set by the CTMFM was 2,600 t despite modeled replacement capture estimates of 1,761 t and 1,765 t (Cortés et al. 2016b). Given the clearly unsustainable fishing levels and inadequacy of existing regulatory measures, the decline in the biomass and the abundance of the species is likely to continue to occur.

In addition to the biomass and fishing mortality estimates, we received new information regarding the likely effectiveness of the AUCFZ prohibition in 3656 as it pertains to the protection of spiny angelsharks. The Colonello and Massa (2016) study, which was mentioned above in the narrownose smoothhound discussion, also examined the spatial distribution and relative abundance, including life history stages, of the spiny angelshark within and around the 3656 closure. Results confirmed the presence of both sexes and all life history stages of *S. guggenheim* within the 3656 rectangle; however, the sets that frequently showed the highest densities of spiny angelsharks (greater than 2 t/mn^2) occurred north of 36° S. latitude, within the Río de la Plata estuary and territorial waters of Uruguay (Colonello and Massa 2016).

In contrast, based on landings data from the Argentine commercial fleet, Hozbor and Pérez (2016) suggest that the distribution of the species may be concentrated in and around 3656. Using official fisheries statistics from the Argentine commercial fleet between 2000 and 2015, Hozbor and Pérez (2016) found that the fleet of boats 18–25 m in length mostly operated in the depth stratum where *S. guggenheim* would occur, whereas the boats <18 m had a more limited area of operation, and the boats >25 m fished in depths greater than 50 m and south of 38° S. latitude, and, therefore, would likely only catch *S. argentina*. Not surprisingly, the authors found that the fleet of 18–25 m boats represented, on average, about 52 percent of the annual total catch of *S. guggenheim* over the time period (Hozbor and Pérez 2016). Using the fishery reports from this fleet, the authors examined the distribution of landings of *S. guggenheim* by statistical rectangle (for example, statistical rectangle 3655 is a rectangle defined by lines drawn from 36° S. latitude to 37° S. latitude and 55° W. longitude to 56° W. longitude). The results showed that the landings from 2000–2015 were greatest in rectangles 3655, 3756, and 3656 (which is the closure area); however, since the 3656 closure has been in effect, landings have decreased in 3656 and increased in the neighboring rectangles including 3556, 3655, and 3756 (Hozbor and Pérez 2016). Additionally, the rectangle covering the Río de la Plata estuary (3555) also showed an increase in landings in recent years to the point where landings from this rectangle are around the same magnitude as those in 3655 and 3756 (Hozbor and Pérez 2016). In other words, similar to the findings from the Colonello and Massa (2016), the data from Hozbor and Pérez (2016) also suggest a potential redistribution of fishing effort around the closed area (3656). For spiny angelsharks, however, this may portend even greater declines in the species as the Colonello and Massa (2016) observed higher abundance of the species north of 36° S. latitude, including in the Río de la Plata estuary, where the data from Hozbor and Pérez (2016) indicate a recent increasing trend in landings of the species, likely due to the redistribution of fishing effort as a result of the 3656 closure. As such, we do not find that existing regulatory measures in the AUCFZ, including the 3656 closure, are adequately decreasing the threat of overutilization to the point where the species is no longer at risk of declines.

In Uruguay, the proposed rule provided angelshark landings data by Uruguayan fleets operating in the AUCFZ. The proposed rule noted that the proportion of Uruguayan landings compared to Argentinian landings increased to 18.4 percent of the total by 2014 (80 FR 76071; December 7, 2015), as did the number of angelshark landings attributed to Uruguayan vessels (from 26 t in 2012 to 142 t and 158 t in 2013 and 2014, respectively) (80 FR 76095; December 7, 2015). The proposed rule further concluded that this information indicated ''a potential increasing trend in the exploitation of the spiny angelshark by Uruguayan fishing vessels'' (80 FR 76095). However, based on recent landings data from the Dirección Nacional de Recursos Acuáticos (DINARA) presented to the CTMFM, the Uruguayan proportion may have been overstated in the proposed rule. In 2014, landings for *Squatina* spp. in the AUCFZ was 158 t by Uruguayan vessels; however, this comprised only 6.9 percent of the total landings of angelsharks from the treaty area. In 2015, Uruguayan vessels landed 104 t of *Squatina* spp., comprising only 4.4 percent of the total. However, it is worth noting that fishing effort of Uruguayan vessels tends to be concentrated in the Río de la Plata estuary area and the Uruguayan coast north of 36° S. latitude, where, as mentioned above, higher abundance of the species is observed.

Additionally, as noted in the proposed rule, *Squatina* spp. are also

targeted and caught as bycatch in Uruguayan waters by artisanal longliners and gillnetters. New information on the catch of the species by artisanal fishing vessels was provided in Ligrone et al. (2014) who surveyed 21 artisanal fishermen operating in Uruguay between 2006 and 2009. Ligrone et al. (2014) found that *Squatina* spp. comprised 11 percent of the total landing weight, with angelsharks mainly caught by large mesh fishing between October and February and concentrated near the ports of La Paloma or Cabo Polonio. While there is a ban on trawling from the coast of Uruguay to 7 nmi offshore, we could find no similar prohibition for other types of gear.

In Brazilian waters, no new information was found on threats to the species, therefore, our conclusions from the proposed rule remain the same.

Extinction Risk

As stated previously, the information received from public comments on the proposed rule was either already considered in our analysis or was not substantial or relevant, and, therefore none of the information affected our extinction risk evaluations of the daggernose shark (*I. oxyrhynchus*), Brazilian guitarfish (*R. horkelii*), striped smoothhound shark (*M. fasciatus*), and Argentine angelshark (*S. argentina*). Therefore, all of the information contained in the status review reports and proposed rule on the extinction risk of these four elasmobranch species is reaffirmed in this final action. Below, we provide a discussion of how the new information received since publication of the final rule has affected our extinction risk analyses for narrownose smoothhound and spiny angelshark.

Narrownose Smoothhound Shark

We find that the best available information, including the information from the proposed rule as well as the new information received, indicates that *M. schmitti* currently faces a moderate risk of extinction. While there is conflicting evidence regarding the previously reported chronological decline in mean size of maturity, and recent evidence that the declining trend in the AUCFZ population of narrownose smoothhounds has slowed or potentially halted, we note that regulatory measures are not currently adequate to protect the species from overutilization. While landings of the species within the AUCFZ have remained close to or below replacement capture estimates in recent years, the annual catch limits have consistently been set too high, and, if met by fishermen, would result in a continual decline in the species through the foreseeable future.

Additionally, current closures to protect the population of the species within the AUCFZ may not be adequate to significantly decrease its overall risk of extinction, particularly when the Provincial section of the 3656 closure is open to fishing. As was demonstrated in the study by Colonello and Massa (2016), the highest concentrations of juveniles and reproductively active adults were observed in shallow areas, including within the Provincial section of 3656, during the spring surveys in November and December, a time when fishing is allowed within the Provincial area. Also, the redistribution of fishing effort during the closure to neighboring areas, including the Provincial area, suggests that fishermen are likely targeting the species as it moves out of the closure, thus decreasing the effectiveness of the closure in protecting the species during important reproductive events.

Overall, while we find that there is still considerable uncertainty regarding the species' current abundance throughout its entire range, the best available information indicates that the species has likely experienced population declines of significant magnitude since the 1980s due to overutilization, including a 36–47 percent decline in biomass within the AUCFZ and an 85 percent decline in abundance in waters off Brazil, with the possible extirpation of a local breeding population. The species continues to be heavily exploited throughout its range, both targeted and caught as bycatch, and we find that existing regulatory measures are inadequate to prevent further declines in the species throughout the foreseeable future.

Spiny Angelshark

We find that the best available information, including the information from the proposed rule as well as the new information received, indicates that *S. guggenheim* currently faces a high risk of extinction. The primary threat to *S. guggenheim* is overutilization in artisanal and commercial fisheries. In Argentina, *S. guggenheim* biomass has declined by 77 to 81 percent since the 1980s and, despite management measures that include annual catch limits and trawling prohibitions, biomass continues to decline. Additionally, abundance has been on a declining trend since the early 2000s, with current fishing mortality rates 65 percent higher than what would attain maximum sustainable yield. Existing regulatory mechanisms are likely inadequate to prevent further declines in the abundance of the species, considering that annual catch limits are currently set too high to achieve a stable biomass and the 3656 closure does not appear to coincide with the areas of highest *S. guggenheim* density within the AUCFZ. Additionally, a result of the 3656 closure has been a redistribution of fishing effort into areas of the AUCFZ where *S. guggenheim* occurs more frequently, thereby increasing the number of fishery-related mortalities for the species (as demonstrated by recent landings data). While the proposed rule stated that ''While the Brazilian populations have experienced substantial declines and remain at risk from overutilization by fisheries, the same cannot be concluded with certainty for the populations farther south in the species' range'' (80 FR 76099; December 7, 2015) we find this no longer to be accurate. Based on the new information above, we find that the species is experiencing substantial declines and remains at risk from overutilization by fisheries throughout its range. Given the significant demographic risks to the species (*e.g.,* extremely low fecundity, declining population growth rate, and limited connectivity), we find that the continued decline in the species' abundance as a result of overutilization, with evidence of continued and heavy fishing pressure on the species throughout its entire range, and the inadequacy of existing regulatory measures to protect the species from this threat, are significantly compromising the long-term viability of the species and placing its persistence into question.

Protective Efforts

Finally, we considered conservation efforts to protect each species and evaluated whether these conservation efforts are adequate to mitigate the existing threats to the point where extinction risk is significantly lowered and the species' status is improved. None of the comments we received since publication of the proposed rule provided any new, relevant or substantial information regarding conservation efforts to protect the six elasmobranch species. Thus, all of the information, discussion, and conclusions on the protective efforts for the six elasmobranch species contained in the status review reports and proposed rule are reaffirmed in this final action.

Final Determination

We have reviewed the best available scientific and commercial information,

including the petition, the information in the status review reports (Casselbury and Carlson 2015 a–f), the comments of peer reviewers, public comments, and information that has become available since the publication of the proposed rule (80 FR 76067; December 7, 2015). Based on the best available scientific and commercial information, and after considering efforts being made to protect each of these species, we find that the daggernose shark, Brazilian guitarfish, striped smoothhound shark, spiny angelshark, and Argentine angelshark are in danger of extinction throughout their respective ranges. We have also determined that the narrownose smoothhound is not currently in danger of extinction, but likely to become so in the foreseeable future throughout its range.

As none of the information received since publication of the proposed rule provided any new, relevant or substantial information that changed our analyses or conclusions that led to our determinations for the daggernose shark, Brazilian guitarfish, striped smoothhound shark, and Argentine angelshark, the determinations in the proposed rule for these species (80 FR 76067; December 7, 2015) are reaffirmed in this final rule. For the spiny angelshark and narrownose smoothhound shark, we provide a summary of our final listing determinations for these species based on the new information considered and analyzed in this final rule as well as information discussed in the proposed rule (80 FR 76067; December 7, 2015).

We have determined that the spiny angelshark is presently in danger of extinction from threats of overutilization and the inadequacy of existing regulatory mechanisms (see the discussion and analysis within this final rule as well as the proposed rule for further information). Factors supporting this conclusion include: (1) Significantly reduced abundance and biomass (*e.g.* declines in CPUE of up to 58 percent in Argentina, biomass declines of 77–81 percent in the AUCFZ, and 85 percent decline in Brazilian populations); (2) declining population trends (*e.g.,* in the AUCFZ, abundance has been on a declining trend since the early 2000s, with current fishing mortality rates 65 percent higher than what would attain maximum sustainable yield; in Brazil, annual rate of population decline was estimated at 16 percent in the mid-1990s); (3) high susceptibility to overfishing and vulnerability to depletion given the species' present demographic risks (*e.g.,* extremely low fecundity, low abundance and declining population trends, and limited connectivity); (4) heavily fished both historically and currently, with fleets that operate year-round, including during the sharks' reproductive season migrations, hence capturing all life stages of spiny angelsharks and contributing to the decline and overutilization of the species throughout its range; and (5) current regulations that are inadequate to protect the species from further overutilization throughout its range (*e.g.,* annual catch limits that are currently set too high to achieve a stable biomass and fishery area closures that do not appear to coincide with the areas of highest *S. guggenheim* density).

The spiny angelshark has suffered significant population declines throughout its range due to overutilization in industrial and artisanal fisheries. The decline and subsequent rarity of the spiny angelshark in an area that comprises around half of its range (*i.e.,* off Brazil), combined with the declines in biomass of up to 81 percent in the AUCFZ, its significant demographic risks, and evidence of continued and heavy fishing pressure on the species throughout its range, make the spiny angelshark particularly susceptible to increased local extirpations and place it at immediate risk of extinction from environmental and anthropogenic perturbations or catastrophic events. Additionally, with no indication that abundance trends have stabilized or reversed in recent years, and evidence that existing regulatory measures are inadequate to alter this trend, this species will continue to suffer from fishery-related mortality throughout its range and remain in danger of extinction. Therefore, we are listing the spiny angelshark as endangered under the ESA.

We have determined that the narrownose smoothhound shark is not presently in danger of extinction throughout its range, but likely to become so in the foreseeable future from threats of overutilization and the inadequacy of existing regulatory mechanisms (see the discussion and analysis within this final rule as well as the proposed rule for further information). Factors supporting this conclusion include: (1) Moderate declines in abundance (*e.g.,* most abundant houndshark in the Argentine Sea yet declines in biomass of 36–47 percent in AUCFZ, 85 percent decline in a Brazilian winter migrant population and potential extirpation of local population); (2) potential stabilization of biomass in AUCFZ (based on recent stock assessment data); (3) moderate susceptibility to overfishing and vulnerability to depletion given the species' present demographic risks (*e.g.,* relatively high intrinsic rate of population increase and ability to withstand moderate levels of exploitation of up to 10 percent of the total population); (4) heavily exploited throughout its range (considered the most important elasmobranch in Argentine fisheries, making up 9–12 percent of the total landings from coastal fleets; target of artisanal gillnet fisheries); (5) decreases in average size of landed sharks (observed by the late 1990s and early 2000s); and (6) current regulations that are inadequate to protect the species from overutilization and further decline throughout its range (*e.g.,* annual catch limits that are currently set too high to achieve a stable biomass and fishery area closures that may not protect the species from fishery-related mortality).

The species has experienced population declines of varying magnitude throughout its range. Although the species' relatively high intrinsic rate of population increase and ability to withstand moderate levels of exploitation up to 10 percent of the total population provides the narrownose smoothhound shark with some protection from extinction, and is likely the reason why the species remains the most abundant houndshark in the Argentine Sea, the decreases in populations (particularly off Brazil) and average size of the species suggest it is being exploited at a level exceeding what it can sustain. While biomass may currently be stable in the AUCFZ, this does not appear to be a result of adequate existing regulatory measures as annual catch limits have consistently been set too high in the fishery. In fact, if these catch limits are actually met by fishermen, it would result in a continual decline in the species through the future. Therefore, while the species is not presently in danger of extinction, we find that it is likely to become so within the foreseeable future as it has already suffered declines in abundance from historical overutilization, continues to be heavily exploited throughout its range, and lacks adequate protection from these threats. Therefore, we are listing the narrownose smoothhound shark as threatened under the ESA.

Because we find that all six species are either in danger of extinction or likely to become so within the foreseeable future throughout all of their ranges, there is no need to evaluate any of the species' status in any portion of their range.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)); Federal agency requirements to consult with NMFS under section 7 of the ESA to ensure their actions are not likely to jeopardize the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); designation of critical habitat if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); and prohibitions on taking and certain other activities (16 U.S.C. 1538, 1533(d)). In addition, recognition of the species' imperiled status through listing promotes conservation actions by Federal and State agencies, foreign entities, private groups, and individuals.

Identifying Section 7 Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations (50 CFR part 402) require Federal agencies to consult with us to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. It is unlikely that the listing of these species under the ESA will increase the number of section 7 consultations because these species occur entirely outside of the United States and are unlikely to be affected by Federal actions.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat shall not be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12(g)).

The best available scientific and commercial data as discussed above identify the geographical areas occupied by *I. oxyrhynchus, R. horkelii, M. fasciatus, M. schmitti, S. guggenheim,* and *S. argentina* as being entirely outside U.S. jurisdiction, so we cannot designate occupied critical habitat for these species. We can designate critical habitat in areas in the United States that are unoccupied by the species if the area(s) are determined to be essential for the conservation of the species. The best available scientific and commercial information on these species does not indicate that U.S. waters provide any specific essential biological function for any of these species. Therefore, based on the best available information, we do not intend to designate critical habitat for *I. oxyrhynchus, R. horkelii, M. fasciatus, M. schmitti, S. guggenheim,* and *S. argentina.*

ESA Section 9 and 4(d) Prohibitions

Because we are listing *I. oxyrhynchus, R. horkelii, M. fasciatus, S. guggenheim,* and *S. argentina* as endangered, all of the prohibitions of section 9(a)(1) of the ESA will apply to these species. These include prohibitions against the import and export of any endangered species; the sale and offering for sale of such species in interstate or foreign commerce; the delivery, receipt, carriage, transport, or shipment of such species in interstate or foreign commerce and in the course of a commercial activity; and the ''take'' of these species within the U.S., within the U.S. territorial seas, or on the high seas. Take is defined as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' These prohibitions apply to all persons subject to the jurisdiction of the United States.

In the case of threatened species, ESA section 4(d) requires the Secretary to issue regulations deemed necessary and advisable for the conservation of the species. We have evaluated the needs of and threats to the narrownose smoothhound shark and have determined that protective regulations pursuant to section 4(d) are not currently necessary and advisable for the conservation of the species. The main threats identified for the species are overutilization and inadequate existing regulatory mechanisms. The threat of overutilization is primarily a result of heavy fishing pressure by foreign industrial, commercial and artisanal fisheries. Because the narrownose smoothhound occurs entirely outside of the United States, is not targeted or caught by U.S. fishermen, or threatened by commercial trade with the United States, extending the section 9(a) prohibitions to this species will not result in added conservation benefits or species protection. Therefore, we do not intend to issue section 4(d) regulations for the narrownose smoothhound shark.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not likely constitute a violation of section 9 of the ESA.

The intent of this policy is to increase public awareness of the effects of this listing on proposed and ongoing activities within the species' ranges. Activities that we believe could (subject to the exemptions set forth in 16 U.S.C. 1539) result in a violation of section 9 prohibitions for the five endangered species include, but are not limited to, the following:

(1) Possessing, delivering, transporting, or shipping any individual, part (dead or alive), or product taken in violation of section 9(a)(1);

(2) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any individual, part, or product in the course of a commercial activity;

(3) Selling or offering for sale in interstate or foreign commerce any individual, part, or product except antique articles at least 100 years old; and

(4) Importing or exporting these species or any part or product of these species.

We emphasize that whether a violation results from a particular activity is entirely dependent upon the facts and circumstances of each incident. Further, an activity not listed may in fact constitute or result in a violation.

Identification of Those Activities That Would Not Likely Constitute a Violation of Section 9 of the ESA

Although the determination of whether any given activity constitutes a violation is fact dependent, we consider the following actions, depending on the circumstances, as being unlikely to violate the prohibitions in ESA section 9: (1) Take authorized by, and carried out in accordance with the terms and conditions of, an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species; and (2) continued possession of parts and products that were in possession at the

time of listing. Such parts and products may be non-commercially exported or imported; however the importer or exporter must be able to provide evidence to show that the parts or products meet the criteria of ESA section 9(b)(1) (*i.e.,* held in a controlled environment at the time of listing, in a non-commercial activity).

References

A complete list of the references used in this final rule is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F.2d 829 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this final rule does not have significant Federalism effects and that a Federalism assessment is not required.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Endangered and threatened species.

Dated: May 4, 2017.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by adding a new entry for ''Shark, narrownose smoothhound'' in alphabetical order by common name under the ''Fishes'' table subheading to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) The threatened species under the jurisdiction of the Secretary of Commerce are:

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	* * *		*
FISHES					
*	*	*	* * *		*
Shark, narrownose smoothhound.	*Mustelus schmitti*	Entire species	*[Insert **Federal Register** page where the document begins],* May 10, 2017.	NA	NA
*	*	*	* * *		*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 4. In § 224.101, paragraph (h), amend the table by adding new entries for five species in alphabetical order by common name under the ''Fishes'' table subheading to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	* * *		*
FISHES					
Angelshark, Argentine.	*Squatina argentina* ...	Entire species	*[Insert **Federal Register** page where the document begins],* May 10, 2017.	NA	NA

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	* * *		*
Angelshark, spiny	*Squatina guggenheim.*	Entire species	*[Insert* ***Federal Register*** *page where the document begins],* May 10, 2017.	NA	NA
*	*	*	* * *		*
Guitarfish, Brazilian ..	*Rhinobatos horkelii* ...	Entire species	*[Insert* ***Federal Register*** *page where the document begins],* May 10, 2017.	NA	NA
*	*	*	* * *		*
Shark, daggernose ...	*Isogomphodon oxyrhynchus.*	Entire species	*[Insert* ***Federal Register*** *page where the document begins],* May 10, 2017.	NA	NA
*	*	*	* * *		*
Shark, striped smoothhound.	*Mustelus fasciatus*	Entire species	*[Insert* ***Federal Register*** *page where the document begins],* May 10, 2017.	NA	NA
*	*	*	* * *		*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[FR Doc. 2017–09416 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 82, No. 89

Wednesday, May 10, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–17–0031; NOP–15–06A]

RIN 0581–AD74

National Organic Program (NOP); Organic Livestock and Poultry Practices Second Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the U.S. Department of Agriculture's (USDA) intention to pursue one of several actions on the Organic Livestock and Poultry Practices Final Rule (FR) published in the **Federal Register** on January 19, 2017, by USDA's Agricultural Marketing Service (AMS). USDA is asking the public to comment on the possible actions USDA should take in regards to the disposition of the FR. The FR amends the organic livestock and poultry production requirements in the USDA organic regulations by adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expands and clarifies existing requirements covering livestock care and production practices and mammalian living conditions. The FR was originally set to take effect on March 20, 2017, and is now being extended to November 14, 2017.

DATES: Interested persons are invited to submit written comments on this proposed rule on or before June 9, 2017.

ADDRESSES: We invite you to submit comments on the proposed rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Paul Lewis Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2642–So., Ag Stop 0268, Washington, DC 20250–0268.

Instructions: All submissions received must include the docket number AMS–NOP–17–0031; NOP–15–06A, and/or Regulatory Information Number (RIN) 0581–AD74 for this rulemaking. Your comments should clearly indicate whether or not you support an option presented in this proposed rule. You should clearly indicate the reason(s) for the stated position. All comments received and any relevant background documents will be posted without change to *http://www.regulations.gov.*

Document: For access to the document and to read background documents or comments received, go to *http://www.regulations.gov.* Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2642–South Building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director, Standards Division, Telephone: (202) 702–3252; Fax: (202) 720–7808.

SUPPLEMENTARY INFORMATION:

Background

Consistent with the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff entitled ''Regulatory Freeze Pending Review,'' AMS published in the **Federal Register** [82 FR 9967] a notice that delayed the effective date of the FR until May 19, 2017. Along with this proposed rule, AMS is also publishing a Notice in the **Federal Register** that further delays the effective date of the FR until November 14, 2017.

The FR amends the organic livestock and poultry production requirements of the USDA organic regulations by adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expands and clarifies existing requirements covering livestock care and production practices and mammalian living conditions. The FR finalizes a proposed rule that AMS published in the **Federal Register** on April 13, 2016, 81 FR 21955.

Actions Being Considered

Because there are significant policy and legal issues addressed within the FR that warrant further review by USDA, the public is being asked to comment on which of the following four actions they believe would be best for USDA to take with regard to the disposition of the FR. Specifically, the public should submit their comments on the following options:

(1) Let the rule become effective. This means that the rule would become effective on November 14, 2017.

(2) Suspend the rule indefinitely. During the suspension, USDA could consider whether to implement, modify or withdraw the final rule.

(3) Delay the effective date of the rule further, beyond the effective date of November 14, 2017.

(4) Withdraw the rule so that USDA would not pursue implementation of the rule.

Notice Delaying IFR Effective Date

Concurrent with this proposed rule, AMS is publishing in the **Federal Register** a notice extending the effective date of the FR by 180 days until November 14, 2017.

Dated: May 4, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–09410 Filed 5–9–17; 8:45 a.m.]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–1067]

RIN 1625–AA00

Safety Zone; Hurricanes and Other Disasters in South Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone within the Sector Miami Captain of the Port Zone. This

action is necessary to provide for the safety of persons and vessels in the event of reduced or restricted visibility due to hurricanes and other disasters. This action is intended to restrict port operations in the event of hurricanes and other disasters. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 9, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2016–1067 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 Petty Officer Mara Brown, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305–535–4317, email *Mara.J.Brown@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

The Captain of the Port Miami (COTP) has determined that the hazards associated with the reduced or restricted visibility which can occur during hurricanes and other disasters constitute a safety concern for anyone within the proposed safety zone. The purpose of the proposed rule is to ensure the safety of life on navigable waters of the United States by restricting port operations in the event of severe weather conditions or disasters, including hurricanes.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone on the navigable waters of the Sector Miami COTP zone during disasters and other specified severe weather conditions. This proposed rule would restrict port operations and vessel traffic during disasters and severe weather, to include hurricanes, when certain port conditions are set by the COTP. The proposed rule would give the COTP flexibility in controlling and reconstituting vessel traffic during periods of heavy weather and allows for expediting resumption of the Maritime Transportation System following disasters and severe weather.

Hurricane Port Conditions (WHISKEY, X–RAY, YANKEE, and ZULU) are standardized states of operation instituted by the COTP and shared with all major ports, facilities, and members of the Maritime Transportation System. The intermodal and dynamic nature of the Maritime Transportation System requires all parties to comply with safety and security procedures when faced with the challenges of hurricanes and other disasters.

Notice of Hurricane Port Conditions and their requirements will be given via Marine Safety Information Bulletins, online at *http://homeport.uscg.mil/miami,* Broadcast Notice to Mariners, and Severe Weather Advisory Team meetings.

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

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

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB 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 not significant for the following reasons: (1) Vessel traffic and facilities will be impacted by this rule only during limited times while heavy weather is expected to impact the Sector Miami Captain of the Port Zone; (2) vessel traffic would be secured only during port conditions Yankee and Zulu, and only in port areas potentially affected by gale force winds; and (3) the Coast Guard would issue updates on *http://homeport.uscg.mil/miami,* VHF channel 16, and during Severe Weather Advisory Team meetings.

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 a substantial number of small entities.

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

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

proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zones implemented during hurricanes or other heavy weather events. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary Record of Consideration (REC) supporting this determination 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.

List of Subjects in 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 part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.785 to read as follows:

§ 165.785 Safety Zone; Hurricanes and Other Disasters in South Florida.

(a) *Regulated Areas.* All navigable waters, as defined in 33 CFR 2.36, within the Captain of the Port Zone, Miami Florida, as described in 33 CFR 3.35–10, during specified conditions.

(b) *Definitions.* (1) The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami, in the enforcement of the regulated areas.

(2) Port Condition WHISKEY means condition set by the Captain of the Port when weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

(3) Port Condition X–RAY means condition set by the Captain of the Port when weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) Port Condition YANKEE means condition set by the Captain of the Port when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) Port Condition ZULU means condition set by the Captain of the Port when weather advisories indicate that

sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) *Regulations.*—(1) *Port Condition WHISKEY.* All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm upon the anticipation of the setting of Port Condition X–RAY. Ports and waterfront facilities shall begin removing all debris and securing potential flying hazards. Container stacking plans shall be implemented. Waterfront facilities that are unable to reduce container stacking height to no more than four high must submit a container stacking protocol to the Captain of the Port (COTP).

(2) *Port Condition X–RAY.* All vessels and port facilities shall ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Facilities shall continue to implement container stacking protocol. Containers must not exceed four tiers, unless previously approved by the COTP. Containers carrying hazardous materials may not be stacked above the second tier. All oceangoing commercial vessels greater than 500-gross tons must prepare to depart ports and anchorages within the affected regulated area. These vessels shall depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in port. Vessels with COTP's permission to remain in port must implement their pre-approved mooring arrangement. Terminal operators shall prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE.* Affected ports are closed to inbound vessel traffic. All oceangoing commercial vessels greater than 500-gross tons must have departed designated ports within the Sector Miami Captain of the Port Zone. Appropriate container stacking protocol must be completed. Terminal operators must terminate all cargo operations not associated with storm preparations: Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities shall continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act (MTSA).

(4) *Port Condition ZULU.* All port waterfront operations are suspended, except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) *Emergency Restrictions for Other Disasters.* Any natural or other disasters that are anticipated to affect the Sector Miami Captain of the Port zone will result in the prohibition of commercial vessel traffic transiting or remaining in the port or facility operations.

Dated: April 11, 2017.

J.H. D. Solomon,

Captain, U.S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 2017–09476 Filed 5–9–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0275]

RIN 1625–AA00

Safety Zone; Hope Chest Buffalo Niagara Dragon Boat Festival, Buffalo River, Buffalo, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of the Buffalo River. This action is necessary to provide for the safety of life on these navigable waters near Buffalo River Works, Buffalo, NY, during the Hope Chest Buffalo Niagara Dragon Boat Festival on June 17, 2017, which includes boat races. This proposed rulemaking would prohibit persons and vessels from passing through the safety zone during race heats unless authorized by the Captain of the Port Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 30, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0275 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 LT Michael Collet, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *SectorBuffaloMarineSafety@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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 December 08, 2016, the Hope Chest Buffalo (Lumanina Crop) notified the Coast Guard that it will be conducting a series of dragon boat races from 8 a.m. to 5 p.m. on June 17, 2017. The dragon boat races are to take place in the Buffalo River behind the Buffalo River Works restaurant in a 300 meter long course consisting of 4 lanes, each 10 meters wide in Buffalo, NY. The Captain of the Port Buffalo (COTP) has determined that a boating race event on a navigable waterway will pose a significant risk to participants and the boating public.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the race course during heats of the scheduled event. Vessel traffic will be allowed to pass through the safety zone between heats. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 7:45 a.m. to 5:15 p.m. on June 17, 2017, that would be effective and enforced intermittently. The safety zone would cover all navigable waters of the Buffalo River; Buffalo, NY starting at position 42° 52′ 12.60″ N. and 078° 52′ 17.64″ W. then Southeast to 42° 52′ 3.17″ N. and 078° 52′ 12.43″ W. then East to 42° 52′ 3.68″ N. and 078° 52′ 10.35″ W. then Northwest to 42° 52′ 13.41″ N. and 078° 52' 16.57″ W. then returning to the point

of origin. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 8 a.m. to 5 p.m. racing event. Vessels will be permitted to pass through the safety zone intermittently during the event as allowed by the COTP or the on-scene representative. No vessel or person would be permitted to enter the safety zone 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

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 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.''

This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

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 safety zone. Vessel traffic would be able to safely transit through this safety zone in between race heats which would impact a small designated area of the Buffalo River for one day. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone for one day during intermittent periods. Normally such actions are categorically excluded from further review under section 2.B.2, and Figure 2–1, paragraph 34(g) of the Instruction. Paragraph 24(g) pertains to the establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. A preliminary 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 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 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 part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0275 to read as follows:

§ 165.T09–0275 Safety Zone; Hope Chest Buffalo Niagara Dragon Boat Festival, Buffalo River, Buffalo, NY

(a) *Location.* This zone will cover all navigable waters of the Buffalo River; Buffalo, NY starting at position 42°52′12.60″ N. and 078°52′17.64″ W. then Southeast to 42°52′3.17″ N. and 078°52′12.43″ W. then East to 42°52′3.68″ N. and 078°52′10.35″ W. then Northwest to 42°52′13.41″ N. and 078°52′16.57″ W. then returning to the point of origin.

(b) *Enforcement Period.* This regulation will be enforced intermittently on June 17, 2017 from 7:45 a.m. until 5:15 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 4, 2017.

J.S. Dufresne,

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

[FR Doc. 2017–09483 Filed 5–9–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO15

Use of Medicare Procedures To Enter Into Provider Agreements for Extended Care Services

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) published a notice of proposed rulemaking in the **Federal Register** on February 13, 2013, that proposed amending its regulations to allow VA to enter into provider agreements to obtain extended care services for Veterans from community providers. Since publication of that proposed rule, further review has led VA to conclude VA cannot achieve the proposal's goals without a statutory change. For this reason, VA withdraws the proposed rule.

DATES: This proposed rule is withdrawn as of May 10, 2017.

FOR FURTHER INFORMATION CONTACT: Daniel Schoeps, Office of Geriatrics and Extended Care (10P4G), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–6763 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA published a notice of proposed rulemaking in the **Federal Register** on February 13, 2013, that proposed to allow VA to enter into provider agreements to obtain extended care services for Veterans from community providers under 38 U.S.C. 1720(c)(1) (see 78 FR 10117). Since publication of that proposed rule, further review has led VA to conclude the goals of this regulation cannot be achieved without a statutory change. For this reason, VA withdraws the proposed rule. VA has proposed and continues to support legislation that would authorize VA to use provider agreements to purchase care in the community.

After publication of the proposed rule, section 101 of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146, 128 Stat.1754, hereafter referred to as ''the Choice Act'') created the Veterans Choice Program, which provides legal authority for VA to enter into provider agreements to obtain certain extended care services for Veterans. The Veterans Choice Program also has regulations, at 38 CFR 17.1500, *et seq.,* that are currently operational and have criteria similar to those in the proposed rule AO15, including eligibility standards for non-

VA providers and standards for payment rates.

Although the Choice Act provider agreements are similar in kind, and might seem to provide the same authority, they do not. Proposed AO15 would have authorized the use of provider agreements to provide ''extended care services,'' defined as ''geriatric evaluation; nursing home care; domiciliary services; adult day-health care; noninstitutional palliative care, noninstitutional hospice care, and home health care when they are noninstitutional alternatives to nursing home care; and respite care'' (see 70 FR 10121 (Feb. 13, 2013)). Although the Choice Act provides clear legal authority for VA to enter into provider agreements, the authority is limited to care authorized under the Veterans Choice Program for eligible Veterans and furnished by Choice-eligible providers. Further, the Veterans Choice Program covers only hospital care and medical services in VA's medical benefits package (see 38 CFR 17.38); this captures some extended care services (noninstitutional alternatives to nursing home care like adult day-health care and respite care) but not the full scope of services proposed AO15 would have covered. Finally, the Veterans Choice Program will expire when the Choice Fund, established under section 802 of the Choice Act, has been exhausted. VA will continue to use provider agreements authorized by the Choice Act until the Veterans Choice Program expires, but to accomplish the goals of the proposed rule, Congress would need to enact a provider agreement provision authorizing VA to use provider agreements to purchase care in the community. For these reasons, VA withdraws the proposed rule.

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 May 4, 2017, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: May 5, 2017.

Janet Coleman,

Chief, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2017–09449 Filed 5–9–17; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0645 FRL–9962–10-Region 5]

Air Plan Approval; Indiana; Commissioner's Orders for SABIC Innovative Plastics

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve as a revision to the Indiana State Implementation Plan (SIP) a submittal from the Indiana Department of Environmental Management (IDEM) to EPA, dated December 5, 2016. The submittal consists of an order issued by the Commissioner of IDEM that establishes permanent and enforceable sulfur dioxide (SO_2) emission limits for SABIC Innovative Plastics (SABIC). IDEM submitted this order so the area near SABIC can be designated ''attainment'' of the 2010 primary SO_2 National Ambient Air Quality Standards, a matter that will be addressed in a separate future rulemaking. EPA's approval of this order would make these SO_2 emission limits and applicable reporting, recordkeeping, and compliance demonstration requirements part of the federally enforceable Indiana SIP.

DATES: Comments must be received on or before June 9, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0645 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7947, *ko.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 20, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017–09383 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0707; FRL–9962–08–Region 5]

Air Plan Approval; Indiana; Commissioner's Order for Carmeuse Lime, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, as a revision to the Indiana State Implementation Plan (SIP), a submittal from the Indiana Department of Environmental Management (IDEM) to EPA, dated December 22, 2016. The submittal consists of an order issued by the Commissioner of IDEM that establishes permanent and enforceable sulfur dioxide (SO_2) emission limits for Carmeuse Lime, Inc. (Carmeuse), applicable to its Gary, Indiana lime manufacturing plant. IDEM submitted this order so the area near Carmeuse can be designated ''attainment'' of the 2010 primary SO_2 National Ambient Air Quality Standards, a matter that will be addressed in a separate future rulemaking. EPA's approval of this order would make these SO_2 emission limits and applicable reporting, recordkeeping, and compliance demonstration requirements part of the federally enforceable Indiana SIP.

DATES: Comments must be received on or before June 9, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0707 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For 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: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7947, *ko.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 21, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017–09381 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2017–0013; FRL–9960–68–Region 2]

Approval and Revision of Air Quality Implementation Plans; State of New York; Regional Haze State and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a source-specific revision to the New York State Implementation Plan (SIP). This revision consists of a Best Available Retrofit Technology (BART) determination for the Danskammer Generating Station Unit 4. The SIP revision establishes emission limits for sulfur dioxide, oxides of nitrogen, and particulate matter that are identical to those set by the EPA's Federal Implementation Plan (FIP) for Danskammer Unit 4, which was promulgated in an action taken on August 28, 2012. The SIP revision also restricts Danskammer Unit 4 to combusting only natural gas. The EPA proposes to find that the SIP revision fulfills the requirements of the Clean Air Act and the EPA's Regional Haze Rule for BART at Danskammer Unit 4. In conjunction with this proposed approval, we propose to withdraw those portions of the FIP that address BART for Danskammer Unit 4.

DATES: Comments must be received on or before June 9, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2017–0013 to *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: Edward J. Linky, Environmental Protection Agency, Air Programs Branch, 290 Broadway, New York, New York 1007–1866 at 212–637–3764 or by email at *Linky.Edward@epa.gov.*

SUPPLEMENTARY INFORMATION:

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IV. What is the EPA's analysis of NYSDEC's submittal?
V. Statutory and Executive Order Reviews

Throughout this document whenever ''Agency,'' ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What action is the EPA proposing?

The EPA is proposing to approve a source-specific State Implementation Plan (SIP) revision for Unit 4 at the Danskammer Generating Station submitted by the New York State Department of Environmental Conservation (NYSDEC) on August 10, 2015, and supplemented by NYSDEC on August 5, 2016.[1] Specifically, the EPA is proposing to approve emission limits for sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and particulate matter (PM) for Unit 4 at the Danskammer Generating Station that are equivalent to the emission limits established by the EPA's Federal Implementation Plan (FIP) that was promulgated on August 28, 2012 (77 FR 51915, 51928). The EPA is also proposing to approve a condition in the SIP revision that restricts Danskammer Unit 4 to combusting only natural gas.

II. What is the background information for this proposal?

This section provides a brief overview of the requirements of the Clean Air Act (CAA) and Regional Haze Rule that apply to this particular action. Please refer to our previous rulemakings on the New York Regional Haze SIP for additional background regarding the visibility protection provisions of the CAA and the Regional Haze Rule.[2]

A. SIP and FIP Background

The CAA requires each state to develop plans to meet various air quality requirements, including protection of visibility. (CAA sections 110(a), 169A, and 169B). The plans developed by a state are referred to as SIPs. A state must submit its SIPs and SIP revisions to EPA for approval. Once approved, a SIP is federally enforceable, that is enforceable by the EPA and subject to citizen suits under the CAA. If a state fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or unapprovable, then EPA must promulgate a FIP to fill this regulatory gap. (CAA section 110(c)(1)).

B. Regional Haze Background

In the 1977 Amendments to the CAA, Congress initiated a program for protecting visibility in the nation's national parks and wilderness areas. Section 169A(a)(1) of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' In 1990, Congress added section 169B to the CAA to address regional haze issues. On July 1, 1999, the EPA promulgated the Regional Haze Rule (RHR) (64 FR 35714). The requirement to submit a Regional Haze SIP applies to New York and all 50 states, the District of Columbia, and the Virgin Islands. 40 CFR 51.308(b) of the RHR required states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. EPA Action on New York's Regional Haze Submittals

The EPA's final action on New York's Regional Haze SIP included approving 17 source-specific SIP revisions containing permits for Best Available Retrofit Technology (BART) and promulgating a FIP to address two sources where EPA disapproved New York's BART determinations—Roseton Generating Station (Units 1 and 2) and the Danskammer Generating Station (Unit 4). 77 FR 51915 (August 28, 2012).

On August 10, 2015, NYSDEC submitted a request for a source-specific SIP revision for Danskammer Unit 4 which would replace the EPA's FIP. In this action, the EPA proposes to approve the SIP revision and remove Danskammer Unit 4 from the FIP, but this action does not address the Roseton Generating Station still covered by the EPA's FIP.

III. What is included in the NYSDEC SIP submittal?

On August 10, 2015, NYSDEC submitted a request for a source-specific SIP revision for Danskammer Unit 4, which would replace the BART emission limits and related requirements in the EPA's FIP that were promulgated in the **Federal Register** on August 28, 2012 (77 FR 51915). This SIP revision contained Danskammer Unit 4's Title V permit conditions 61–64.

In a letter to NYSDEC dated July 14, 2016, the EPA requested that NYSDEC supplement its August 10, 2015 SIP submittal. Specifically, the EPA requested that NYSDEC submit Danskammer Unit 4's Title V permit condition 55.6 (at pages 48 and 49 of the permit), which restricts Unit 4 to combusting only natural gas. The EPA also requested that NYSDEC submit a copy of the April 1, 2015 public notice as published in NYSDEC's Environmental Notice Bulletin (ENB).

In a letter dated August 5, 2016, NYSDEC submitted to the EPA (1) permit condition 55.6 (pages 48 and 49) of Dankskammer Unit 4's Title V permit that was renewed on February 24, 2015, which permits Unit 4 to combust natural gas only and (2) a copy of NYSDEC's April 1, 2015 ENB that noticed the proposed Danskammer SIP revision.

IV. What is the EPA's analysis of NYSDEC's submittal?

In its submittal, NYSDEC includes BART emission limits for Danskammer Unit 4 that are identical to those contained in the EPA's FIP: 0.12 pounds NO_X per million Btu (lb/MMBtu) calculated on a 24-hour average during the ozone season and on a 30-day average during the rest of the year; 0.09 lb SO_2/MMBtu calculated on a 24-hour average; and 0.06 lb PM/MMBtu calculated on a 1-hour average. NYSDEC also includes a condition that restricts Danskammer Unit 4 to combusting only natural gas.

The EPA is proposing to approve NYSDEC's SIP submittal because it is more stringent than the EPA's FIP. The SIP submittal includes BART emission limits for SO_2, NO_X, and PM and related administrative requirements (*i.e.,* monitoring, recordkeeping and reporting requirements) that are identical to those in the EPA's FIP. Moreover, the SIP submittal includes a

[1] NYSDEC's August 10, 2015, submittal also included SIP revisions for LaFarge Building Materials and Rockville Centre Power Plant which we intend to act on separately.

[2] 77 FR 24794 (April 25, 2012) (proposed rule); 77 FR 27162 (May 9, 2012) (Notice of Data Availability); 77 FR 51915 (Aug. 28, 2012) (final rule).

condition that restricts Dankskammer Unit 4 to combusting only natural gas, which will have the effect of further reducing visibility-impairing emissions, particularly SO_2 and PM. Consequently, the EPA proposes to withdraw those portions of the FIP that address BART for Danskammer Unit 4. The EPA will fully consider all significant comments on these proposed actions.

VI. Statutory and Executive Order Reviews

In reviewing NYSDEC's SIP submittal, the EPA's role is to approve state choices if they meet the requirements of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason this action:

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

This action does not have tribal implications as specified by Executive Order 13175. The SIP revision submitted by NYSDEC is not approved to apply on any Indian reservation land or in any other areas where the EPA or Tribal Nation has demonstrated that a Nation has jurisdiction. Thus Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 10, 2017.

Catherine R. McCabe,

Acting Regional Administrator, Region 2.

[FR Doc. 2017–09384 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0213; FRL–9961–91-Region 4]

Air Plan Approval; Kentucky; Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on February 8, 2016, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 Annual Particulate Matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in Kentucky. EPA is proposing to determine that Kentucky's infrastructure submission, submitted on February 8, 2016, addresses certain infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before June 9, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0213 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bell can be reached via electronic mail at *bell.tiereny@epa.gov* or the telephone number (404) 562–9088.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (μg/m³) to 12.0 μg/m³. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$

NAAQS to EPA no later than December 14, 2015.[1]

This rulemaking is proposing to approve portions of Kentucky's $PM_{2.5}$ infrastructure SIP submission for the applicable requirements of the 2012 Annual $PM_{2.5}$ NAAQS, with the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1, 2 and 4), and the minor source program requirements of section 110(a)(2)(C), for which EPA is not proposing any action in this rulemaking regarding these requirements. For the aspects of Kentucky's submittal proposed for approval in this rulemaking, EPA notes that the Agency is not approving any specific rule, but rather proposing that Kentucky's already approved SIP meets certain CAA requirements.

II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized below and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[3]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Kentucky that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 Annual $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[4] EPA

[1] In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term ''401 KAR XX:XXX'' indicates that the cited regulation has either been approved, or submitted for approval into Kentucky's federally-approved SIP. The statutes cited from the Kentucky Revised Statutes (also referred to as ''KRS'') throughout this rulemaking are not approved into the Kentucky SIP, unless otherwise indicated.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] As mentioned above, this element is not relevant to this proposed rulemaking.

[4] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that

therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[5] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[6] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[7] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[8]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[9]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have

states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[5] See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25162, at 25163—65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[6] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[7] See, *e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[8] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007, submittal.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

already been developed and applied to individual SIP submissions for particular elements.[10] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[11] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[12] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[13] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have

[10] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[11] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[12] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations. On March 17, 2016, EPA released a memorandum titled, ''Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' to provide guidance to states for interstate transport requirements specific to the $PM_{2.5}$ NAAQS.

[13] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[14] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[15] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[16]

IV. What is EPA's analysis of how Kentucky addressed the elements of the Sections 110(a)(1) and (2) ''Infrastructure'' provisions?

Kentucky's February 8, 2016 infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. *110(a)(2)(A) Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. These requirements are met through Kentucky Revised Statute (KRS) Chapter 224 Section 10–100 (KRS 224.10–100), which provides the KDAQ the authority to administer all rules, regulations, and orders promulgated under Chapter 224, and to provide for the prevention, abatement, and control of all water, land, and air pollution.

KDAQ cited to chapters and associated Kentucky Administrative Regulations (KAR) under Title 401 to demonstrate that the Commonwealth meets the requirements of this element, including the following:

- *Chapter 50 General Administrative Procedures:* 401 KAR 50:010. *Definitions for 401 KAR Chapter 50;* 401 KAR 50:012. *General application;* 401 KAR 50:015. *Documents incorporated by reference;* 401 KAR 50:020. *Air quality control regions;* 401 KAR 50:025. *Classification of counties;* 401 KAR 50:040. *Air quality models;* 401 KAR 50:042. *Good engineering practice stack height;* 401 KAR 50:045. *Performance tests;* 401 KAR 50:047. *Test procedures for capture efficiency;* 401 KAR 50:050. *Monitoring;* 401 KAR 50:055. *General compliance requirements;* and 401 KAR 50:060. *Enforcement.*
- *Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards:* 401 KAR 51:001. *Definitions for 401 KAR Chapter 51;* 401 KAR 51:005. *Purpose and General Provisions;* 401 KAR 51:010. *Attainment Status Designations;* 401 KAR 51:017. *Prevention of significant deterioration of air quality;* 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas.*
- *Chapter 52 Permits, Registrations, and Prohibitory Rules:* 401 KAR 52:001. *Definitions for 401 KAR Chapter 52*; 401 KAR 52:020. *Title V permits;*[17] 401 KAR 52:030. *Federally-enforceable permits for nonmajor sources;* 401 KAR 52:090. *Prohibitorv rule for hot mix asphalt plants;* 401 KAR 53:005. *General provisions;* 401 KAR 53:010. *Ambient air quality standards.*

Collectively these regulations establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to $PM_{2.5}$ concentrations in the ambient air and provide authority for KDAQ to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the provisions contained in these regulations, and Kentucky's statute are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance for the 2012 Annual $PM_{2.5}$ NAAQS in the Commonwealth.

In this action, EPA is not proposing to approve or disapprove any existing Commonwealth provisions with regard to excess emissions during SSM operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency is addressing

[14] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[15] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[16] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

[17] This rule is not approved into Kentucky's federally-approved SIP.

such state regulations in a separate action.[18]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. *110(a)(2)(B) Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. These requirements are met through KRS 224.10–100 (22), which provides KDAQ the authority to require the installation, maintenance, and use of equipment, devices, or tests and methodologies to monitor the nature and amount of any substance emitted into the ambient air and to provide the information to the Cabinet.

KDAQ cites the following regulations to demonstrate that the Commonwealth meets the requirements of this element: 401 KAR 50:050. *Monitoring;* 401 KAR 51:017. *Prevention of significant deterioration of air quality;* and 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas;* 401 KAR 53:005. *General provisions;* 401 KAR 53:010. *Ambient air quality standards.*

These SIP-approved rules and Kentucky's statute, along with Kentucky's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[19] KDAQ's monitoring network plan was submitted on June 27, 2016, and approved by EPA on October 25, 2016. Kentucky's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2016–0213. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2012 Annual $PM_{2.5}$ NAAQS.

3. *110(a)(2)(C) Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). These requirements are met through 401 KAR 50:060. *Enforcement;* 401 KAR 51:017. *Prevention of significant deterioration of air quality;* and 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas.* Collectively, these regulations enable KDAQ to regulate sources contributing to the 2012 Annual $PM_{2.5}$ NAAQS. EPA's analysis of how these provisions of Kentucky's SIP address each sub-element (with the exception of the minor source program requirements, as set forth below) is described below.

Enforcement: KDAQ's SIP-approved regulation, 401 KAR 50:060. *Enforcement,* provides for enforcement of $PM_{2.5}$ emission limits and control measures through permit and compliance schedule modifications and revocations, and authorizes administrative penalties and injunctive relief, citing to statutory civil penalty and injunctive relief provisions of KRS 224.99–010. EPA has made the preliminary determination that Kentucky's SIP is adequate for enforcement related to the 2012 Annual $PM_{2.5}$ NAAQS.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's SIP with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission. For the 2012 Annual $PM_{2.5}$ NAAQS, Kentucky's authority to regulate new and modified sources to assist in the protection of air quality in attainment or unclassifiable areas is established in KAR Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* which describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. These requirements are designed to ensure that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Chapter 51 also establishes the permitting requirements for areas in or around nonattainment areas and provides the Commonwealth's statutory authority to enforce regulations relating to attainment and maintenance of the NAAQS.

Kentucky's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the Commonwealth designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[20] EPA has made the preliminary determination that Kentucky's SIP is adequate for PSD permitting for major sources related to the 2012 Annual $PM_{2.5}$ NAAQS.

Regulation of minor sources and minor modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source preconstruction program that regulates emissions of the 2012 Annual $PM_{2.5}$ NAAQS. EPA is not proposing any action in this rulemaking related to the regulation of minor

[18] On June 12, 2015, EPA published a final action entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction.'' See 80 FR 33840.

[19] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

[20] For more information concerning how the Kentucky infrastructure SIP submission currently meets applicable structural PSD program requirements, see the technical support document in the docket for this proposed rulemaking.

sources and minor modifications under section 110(a)(2)(C) and will consider these requirements in relation to Kentucky's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

4. *110(a)(2)(D)(i)(I) and (II) Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to Kentucky's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: A PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) to a NNSR program. As discussed in more detail above under section 110(a)(2)(C), Kentucky's SIP contains the relevant SIP revisions necessary to satisfy the structural PSD requirements of prong 3. Kentucky's SIP-approved NNSR program is found at 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas.* EPA has made the preliminary determination that Kentucky's SIP is adequate for interstate transport for permitting of major sources and major modifications related to the 2012 Annual $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Kentucky's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

5. *110(a)(2)(D)(ii) Interstate and International Transport Provisions:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Regulation 401 KAR 51:010. *Attainment Status Designations* designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the NAAQS. Regulation 401 KAR 51:017. *Prevention of significant deterioration of air quality* and Regulation 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas,* Section 1, require Kentucky to provide notice to nearby states that may be affected by proposed major source modifications. These regulations cite to Federal notification requirements under 40 CFR Sections 51.166 and 52.21, and to 401 KAR 52:100. *Public, affected state, and US. EPA review,* Section 6, which requires that public notice for permit actions be provided to affected states. Additionally, Kentucky does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Kentucky's SIP is adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual $PM_{2.5}$ NAAQS.

6. *110(a)(2)(E) Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Kentucky's SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii).

In support of EPA's proposal to approve elements 110(a)(2)(E)(i) and (iii), KDAQ's infrastructure submission demonstrates that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, fee schedules for the review of plans, and other planning needs. With respect to having the necessary funding and authority to implement the Kentucky SIP, Kentucky regulation, 401 KAR 50:038. *Air Emissions Fee,* and the following State statutes support sub-elements (i) and (iii): KRS 224.10–100. *Powers and Duties of the Cabinet* and KRS 224.10–020. *Departments within the cabinet—Offices and divisions within the departments—Appointments.* As evidence of the adequacy of KDAQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to KDAQ on April 19, 2016, outlining 105 grant commitments and current status of these commitments for fiscal year 2015. The letter EPA submitted to KDAQ can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2016–0213. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, KDAQ's grants were finalized and closed out. EPA has made the preliminary determination that Kentucky has adequate resources for implementation of the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(E)(i) and (iii).

Section 110(a)(2)(E)(ii) requires that Kentucky comply with section 128 of the CAA. Section 128 requires at 128(a)(1) the majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and 128(a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar, powers be adequately disclosed. For purposes of section 128(a)(1), Kentucky has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by the Director of the KDAQ. As such, a ''board or body'' is not responsible for approving permits or enforcement orders in Kentucky, and

the requirements of section 128(a)(1) are not applicable. For purposes of section 128(a)(2), KDAQ's SIP has been updated. On October 3, 2012, EPA took final action to approve incorporation of KRS Chapters 11A.020, 11A.030, 11A.040 and Chapters 224.10–020 and 224.10–100 into the SIP to address the conflict of interest requirements of section 128. *See* 77 FR 60307. These SIP-approved state statutes establish the powers and duties of the Cabinet, departments within the Cabinet, and offices and divisions within such departments (Chapters 224.10–020 and 224.10–100), and support sub-element (ii) by requiring adequate disclosures of potential conflicts (KRS 11A.020. *Public servant prohibited from certain conduct—Exception—Disclosure of personal or private interest*) and otherwise ensuring that public officers and servants do not engage in activities that may present a conflict of interest (KRS 11A.030 *Considerations in determination to abstain from action on official decision—Advisory opinion;* and KRS 11A.040 *Acts prohibited for public servant or officer—Exception*). With the incorporation of these regulations and statutes into the Kentucky SIP, EPA has made the preliminary determination that the Commonwealth has adequately addressed the requirements of section 128(a)(2), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Thus, EPA is proposing approval of KDAQ's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to section 110(a)(2)(E)(ii).

7. *110(a)(2)(F) Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. The Kentucky infrastructure submission describes how the major source and minor source emission inventory programs collect emission data throughout the Commonwealth and ensure the quality of such data. Kentucky meets these requirements through Chapter 50 *General Administrative Procedures,* specifically 401 KAR 50:050 *Monitoring.* 401 KAR 50:050, Section 1, *Monitoring Records and Reporting,* states that the Cabinet may require a facility to install, use, and maintain stack gas and ambient air monitoring equipment and to establish and maintain records, and make periodic emission reports at intervals prescribed by the Cabinet. 401 KAR 50:050 *Monitoring,* Section 1, *Monitoring, Records, and Reporting,* establishes the requirements for the installation, use, and maintenance of stack gas and ambient air monitoring equipment, and authorizes the Cabinet to require the owner or operator of any affected facility to establish and maintain records for this equipment and make periodic emission reports at intervals prescribed by the Cabinet. Also, KRS 224.10–100 (23) requires that any person engaged in any operation regulated pursuant to this chapter file with the Cabinet reports containing information as to location, size, height, rate of emission or discharge, and composition of any substance discharged or emitted into the ambient air or into the waters or onto the land of the Commonwealth, and such other information the Cabinet may require. In addition, EPA is unaware of any provision preventing the use of credible evidence in the Kentucky SIP.[21]

Additionally, Kentucky is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Kentucky made its latest update to the NEI on November 6, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the stationary source monitoring systems related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. *110(a)(2)(G) Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Kentucky's infrastructure SIP submission identifies air pollution emergency episodes and preplanned abatement strategies as outlined in the following Kentucky regulations in Chapter 55 *Emergency Episodes,* specifically: 401 KAR 55:005. *Significant harm criteria,* 401 KAR 55:010. *Episode Criteria,* and 401 KAR 55:015. *Episode Declaration.* 401 KAR 55:005. *Significant Harm Criteria,* Section 1, *Purpose,* defines those levels of pollutant concentration which must be prevented in order to avoid significant harm to the health of persons. 401 KAR 55:010. *Episodic Criteria,* defines those levels of pollutant concentrations which justify the proclamation of an air pollution alert, air pollution warning, an air pollution emergency. 401 KAR 55:015. *Episode Declaration,* provides for the curtailment or reduction of processes or operations which emit an air contaminant or an air contaminant precursor whose criteria has been reached and are located in the affected areas for which an episode level has been declared.

In addition, KRS 224.10–100 *Powers and duties of cabinet* and KRS 224.10–410 *Order for discontinuance, abatement, or alleviation of condition or activity without hearing—Subsequent hearing,* establish the authority for Kentucky's secretary to issue orders to person(s) for discontinuance, abatement, or alleviation of any condition or activity without hearing because the condition or activity presents a danger to the health or welfare of the people of the state, and for the Cabinet to require adoption of any remedial measures deemed necessary. EPA has made the preliminary determination that Kentucky's SIP, and state laws are adequate for emergency powers related

[21] ''*Credible Evidence,*'' makes allowances for owners and/or operators to utilize ''any credible evidence or information relevant'' to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard.

to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. *110(a)(2)(H) SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. As previously discussed, KDAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Kentucky has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS.

KDAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Kentucky. 401 KAR Chapter 53 *Ambient Air Quality* and Chapter 51 *Attainment and Maintenance of the National Ambient Air Quality Standards* grant KDAQ the broad authority to implement the CAA, and as such, provides KDAQ the authority to prepare and develop, after proper study, a comprehensive plan for the prevention of air pollution. These statutes also provide KDAQ the ability and authority to respond to calls for SIP revisions, and KDAQ has provided a number of SIP revisions over the years for implementation of the NAAQS. Additionally, 401 KAR 53:010 outlines the ambient air quality standards necessary for the protection of the public health, the general welfare, and the property and people in the Commonwealth and states that within 60 days of promulgation or revision of any NAAQS by EPA, the Cabinet will initiate a process to promulgate or review this administrative regulation. 401 KAR 51:010. *Attainment Status Designations* provides provisions for the Cabinet to review applicable data and submit to EPA proposed revisions to the list of attainment-nonattainment areas. EPA has made the preliminary determination that Kentucky adequately demonstrates a commitment to provide future SIP revisions related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to section 110(a)(2)(H).

10. *110(a)(2)(J) Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Kentucky's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD, and visibility. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. This requirement is met through provisions in separate implementation plans, such as the Regional Haze SIP, which provide for continued consultation with government officials, including the FLMs. Kentucky adopted consultation procedures in coordination with the transportation partners in the Commonwealth, for the implementation of transportation conformity, which includes the development of mobile inventories for SIP development. Implementation of transportation conformity as outlined in the consultation procedures requires KDAQ to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. Also, KDAQ notes in its February 8, 2016, SIP submission that the following Kentucky regulations provide the Commonwealth the authority to meet this requirement: 401 KAR 50:055. *General compliance requirements;* 401 KAR 50:060. *Enforcement;* 401 KAR 50:065. *Conformity of general federal actions;* 401 KAR 50:066. *Conformity of Transportation Plans, Programs, and Projects;* 401 KAR 51:017. *Prevention of Significant Deterioration of Air Quality;* and 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas.* EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with government officials related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary for the consultation with government officials element of section 110(a)(2)(J).

Public notification (127 public notification): These requirements are met through the following Kentucky regulations: 401 KAR 51:001. *Definitions for 401 KAR Chapter 51;* 401 KAR 51:005. *Purpose and General Provisions;* 401 KAR 51:010. *Attainment Status Designations;* 401 KAR 51:017. *Prevention of significant deterioration of air quality;* 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas;* and 401 KAR 52:100. *Public, Affected State, and US. EPA Review.* Additionally, Kentucky provides air quality information to the public via its Web site at: *http://eppcapp.ky.gov/daq/.* EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide public notification related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary for the public notification element of section 110(a)(2)(J).

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement is met when a state's infrastructure SIP submission for a particular NAAQS demonstrates that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. As discussed in more detail above under section 110(a)(2)(C), Kentucky's SIP contains the relevant SIP revisions necessary to satisfy the structural PSD requirements of this element of section 110(a)(2)(J). EPA has made the preliminary determination that Kentucky's SIP is adequate for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such, EPA has made the determination that it does not need to address the visibility protection element of section 110(a)(2)(J) in Kentucky's infrastructure SIP submission related to the 2012 Annual $PM_{2.5}$ NAAQS.

11. *110(a)(2)(K) Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and

submission of such data to the EPA can be made. This requirement is met through Kentucky regulations 401 KAR 50:040. *Air Quality Models* and 401 KAR 50:050. *Monitoring.* Additionally, Kentucky participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual $PM_{2.5}$ NAAQS, for the Southeastern states. Taken as a whole, Kentucky's air quality regulations and practices demonstrate that KDAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2012 Annual $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. *110(a)(2)(L) Permitting Fees:* This section requires the SIP to direct the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Kentucky regulation, 401 KAR 50:038 *Air Emissions Fee,*[22] provides for the assessment of fees necessary to fund the state permit program. KDAQ ensures this is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Kentucky has a fully approved title V operating permit program at 401 KAR 52:020 *Title V permits*[23] that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Kentucky's SIP and practices adequately provide for permitting fees related to the 2012 Annual $PM_{2.5}$ NAAQS, when necessary. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. *110(a)(2)(M) Consultation and Participation by Affected Local Entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. This requirement is met through provisions in separate implementation plans, such as the regional haze SIP, which provide for continued consultation with government officials, including the FLMs. Kentucky regulation, 401 KAR 50:066. *Conformity of transportation plans, programs, and projects,* and the interagency consultation process as directed by Kentucky's approved Conformity SIP and 40 CFR 93.112 provide for consultation with local groups. More specifically, Kentucky adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. Required partners covered by Kentucky's consultation procedures include Federal, state and local transportation and air quality agency officials. Further, Kentucky's $PM_{2.5}$ infrastructure SIP submission notes that the following State regulations and State statutes provide the Commonwealth the authority to meet the requirements of this element: 401 KAR 50:066. *Conformity of transportation plans, programs, and projects;* 401 KAR 52:100. *Public, Affected State, and US EPA Review;* and KRS Chapter 77. *Air Pollution Control.* EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4) and the minor source program requirements of section 110(a)(2)(C), EPA is proposing to approve Kentucky's February 8, 2016, infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve these portions of Kentucky's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a

[22] This rule is not approved into the federally approved SIP.

[23] This rule is not approved into the federally approved SIP.

tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 17, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–09392 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 17

[WT Docket No. 17–79; FCC 17–38]

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on proposals to reduce the regulatory impediments to wireless network infrastructure investment and deployment.

DATES: Interested parties may file comments on or before June 9, 2017, and reply comments on or before July 10, 2017.

ADDRESSES: You may submit comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). *All filings related to this document shall refer to WT Docket No. 17–79.*

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection modifications proposed herein should be submitted to the Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: For further information on this proceeding, contact Aaron Goldschmidt, *Aaron.Goldschmidt@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–7146, or David Sieradzki, *David.Sieradzki@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–1368.

SUPPLEMENTARY INFORMATION:

This is a summary of the Federal Communications Commission's Notice of Proposed Rulemaking and Notice of Inquiry (NPRM and NOI, respectively), in WT Docket No. 17–79; FCC 17–38, adopted April 20, 2017, and released on April 21, 2017. The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal business hours in 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* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

I. Notice of Proposed Rulemaking

A. Streamlining State and Local Review

1. In this section, the Commission addresses the process for reviewing and deciding on wireless facility deployment applications conducted by State and local regulatory agencies. The Commission seeks comment on several potential measures or clarifications intended to expedite such review pursuant to the Commission's authority under Section 332 of the Communications Act.

2. The Commission has taken a number of important actions to date implementing Section 332(c)(7) of the Communications Act (Act) and Section 6409(a) of the Spectrum Act, each of which has been upheld by federal courts. The Commission seeks to assess the impact of the Commission's actions to date, in order to evaluate the measures the Commission discusses in the NPRM, as well as other possible actions, and to determine whether those measures are likely to be effective in further reducing unnecessary and potentially impermissible delays and burdens on wireless infrastructure deployment associated with State and local siting review processes. Thus, the Commission asks parties to submit facts and evidence on the issues discussed below and on any other matters relevant to the policy proposals set forth here. The Commission seeks information on the prevalence of barriers, costs thereof, and impacts on investment in and deployment of wireless services, including how such costs compare to the overall costs of deployment. The Commission seeks information on the specific steps that various regulatory authorities employ at each stage in the process of reviewing applications, and which steps have been most effective in efficiently resolving tensions among competing priorities of network deployment and other public interest goals. In addition, parties should detail the extent to which the Commission's existing rules and policies have or have not been successful in addressing local

siting review challenges, including effects or developments since the *2014 Infrastructure Order,* the Commission's most recent major decision addressing these issues *(See* Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd 12865 (2014) (*2014 Infrastructure Order*)). To the extent that parties have submitted information in response to the Wireless Telecommunications Bureau's *Streamlining PN* that is relevant to these questions, the Commission invites them to submit such data in the present docket (*See* Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition For Declaratory Ruling, Public Notice, 31 FCC Rcd 13360, 13368 (WTB 2016) (*Streamlining PN*)). In addition, to the extent parties discuss the conduct or practices of government bodies or wireless facility siting applicants, the Commission strongly urges them to identify the particular entities that they assert engaged in such conduct or practices.

3. Further, in seeking comment on new or modified measures to expedite local review, the Commission invites commenters to discuss what siting applicants can or should be required to do to help expedite or streamline the siting review process. Are there ways in which applicants are causing or contributing to unnecessary delay in the processing of their siting applications? If so, the Commission seeks comment on how the Commission should address or incorporate this consideration in any action the Commission takes in this proceeding. For example, to what extent have delays been the result of incomplete applications or failures to properly respond to requests to the applicant for additional information, and how should measures the Commission adopts or revises to streamline application review ensure that applicants are responsible for supplying complete and accurate filings and information? Further, are there steps the industry can take outside the formal application review process that may facilitate or streamline such review? Are there siting practices that applicants can or should adopt that will facilitate faster local review while still achieving the deployment of infrastructure necessary to support advanced wireless broadband services?

1. ''Deemed Granted'' Remedy for Missing Shot Clock Deadlines

4. The Commission now takes a fresh look and seeks comment on a ''deemed granted'' remedy for State and local agencies' failure to satisfy their obligations under Section 332(c)(7)(B)(ii) to act on applications outside the context of the Spectrum Act. The Commission invites commenters to address whether the Commission should adopt one or more of the three options discussed below regarding the mechanism for implementing a ''deemed granted'' remedy. The Commission describes each of these options below and explains its analysis of its legal authority to adopt each of them. The Commission seeks comment on the benefits and detriments of each option and invites parties to discuss the Commission's legal analysis. The Commission also seeks comment on whether there are other options for implementing a ''deemed granted'' remedy.

5. *Irrebuttable Presumption.* In the *2009 Shot Clock Declaratory Ruling,* the Commission created a ''rebuttable presumption'' that the shot clock deadlines established by the Commission were reasonable (*See* Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review, Declaratory Ruling, 24 FCC Rcd 13994 (2009) (*2009 Shot Clock Declaratory Ruling*)). The Commission anticipated that this would give State and local regulatory agencies ''a strong incentive to resolve each application within the time frame defined as reasonable.'' Thus, when an applicant sues pursuant to Section 332(c)(7)(B)(v) to challenge an agency's failure to act on an application by the applicable deadline, the agency would face the burden of ''rebut[ting] the presumption that the established timeframes are reasonable,'' and if it fails to satisfy this burden, the court could ''issu[e] . . . an injunction granting the application.'' The Commission believes one option for establishing a ''deemed granted'' remedy for a State or local agency's failure to act by the applicable deadline would be to convert this *rebuttable presumption* into an *irrebuttable* presumption. Thus, the Commission's determination of the reasonable time frame for action (*i.e.,* the applicable shot clock deadline) would ''set an absolute limit that—in the event of a failure to act—results in a deemed grant.''

6. The Commission believes it has legal authority to adopt this approach. The Commission sees no reason to continue adhering to the cautious approach articulated in the *2009 Shot Clock Declaratory Ruling—i.e.,* that Section 332(c)(7) ''indicates Congressional intent that courts should have the [sole] responsibility to fashion . . . remedies'' on a ''case-specific'' basis. The Commission advanced that theory without citing any legislative history or other sources, and the Fifth Circuit, in its decision upholding the *2009 Shot Clock Declaratory Ruling,* apparently declined to rely on it. Instead, the Fifth Circuit found no indication in the statute and its legislative history of any clear Congressional intent on whether the Commission could ''issue an interpretation of section 332(c)(7)(B)(v) that would guide courts' determinations of disputes under that section,'' and went on to affirm that the Commission has broad authority to render definitive interpretations of ambiguous provisions such as this one in Section 332(c)(7). The Fifth Circuit further found—and the Supreme Court affirmed—that courts must follow such Commission interpretations.

7. The Commission sees nothing in the statute that explicitly compels a case-by-case assessment of the relevant circumstances for each individual application, nor any provision specifically requiring that those time frames be indefinitely adjustable on an individualized basis, rather than subject to dispositive maximums that may be deemed reasonable as applied to specified categories of applications. While Section 332(c)(7)(B)(ii) provides that a locality must act on each application ''within a reasonable time, *taking into account the nature and scope of such request,*'' this does not necessarily mean that a reviewing court ''must consider the specific facts of individual applications'' to determine whether the locality acted within a reasonable time frame; the Commission is well-positioned to take into account the ''nature and scope'' of particular categories of applications in determining the maximum reasonable amount of time for localities to address each type. The Commission seeks comment on this analysis.

8. *Lapse of State and Local Governments' Authority.* In the alternative (or in addition) to the irrebuttable presumption approach discussed above, the Commission believes it may implement a ''deemed granted'' remedy for State and local agencies' failure to act within a reasonable time based on the following interpretation of ambiguous provisions in the statute. Section 332(c)(7)(A) assures these agencies that their ''authority over decisions concerning the placement, construction, and modification of personal wireless service facilities'' is preserved—but significantly, qualifies that assurance with the provision ''except as provided'' elsewhere in Section 332(c)(7). The Commission seeks comment on whether

the Commission should interpret this phrase as meaning that if a locality fails to meet its obligation under Section 332(c)(7)(B)(ii) to ''act on [a] request for authorization to place, construct, or modify personal wireless facilities within a reasonable period of time,'' then its ''authority over decisions concerning'' that request lapses and is no longer preserved. Under this interpretation, by failing to act on an application within a reasonable period of time, the agency would have defaulted its authority over such applications (*i.e.,* lost the protection of Section 332(c)(7)(A), which otherwise would have preserved such authority), and at that point no local land-use regulator would have authority to approve or deny an application. Arguably, the Commission could establish that in those circumstances, there is no need for an applicant to seek such approval. The Commission seeks comment on this interpretation and on the desirability of taking this approach.

9. *Preemption Rule.* A third approach to establish a ''deemed granted'' remedy—standing alone or in tandem with one or both of the approaches outlined above—would be to promulgate a rule to implement the policies set forth in Section 332(c)(7). Sections 201(b) and 303(r), as well as other statutory provisions, generally authorize the Commission to adopt rules or issue other orders to carry out the substantive provisions of the Communications Act. Further, the Fifth Circuit affirmed the determination in the *2009 Shot Clock Declaratory Ruling* that the Commission's ''general authority to make rules and regulations to carry out the Communications Act includes the power to implement section 332(c)(7)(B)(ii) and (v).'' Accordingly, the Commission seeks comment on whether it could promulgate a ''deemed granted'' rule to implement Section 332(c)(7). The Commission also seeks comment on whether Section 253, standing alone or in conjunction with Section 332(c)(7) or other provisions of the Act, provides the authority for the Commission to promulgate a ''deemed granted'' rule.

2. Reasonable Period of Time To Act on Applications

10. In 2009, the Commission determined that, for purposes of determining what is a ''reasonable period of time'' under Section 332(c)(7)(B)(ii), 90 days should be sufficient for localities to review and act on (either by approving or denying) complete collocation applications, and that 150 days is a reasonable time frame for them to review and act on other types of complete applications to place, construct, or modify wireless facilities. In its *2014 Infrastructure Order,* the Commission implemented Section 6409(a) of the Spectrum Act (enacted by Congress in 2012) by, among other things, creating a new 60-day shot clock within which localities must act on complete applications subject to the definitions in the Spectrum Act.

11. The Commission asks commenters to discuss whether the Commission should consider adopting different time frames for review of facility deployments not covered by the Spectrum Act. For example, the Commission seeks comment on whether it should harmonize the shot clocks for applications that are not subject to the Spectrum Act with those that are, so that, for instance, the time period deemed reasonable for non-Spectrum Act collocation applications would change from 90 days to 60 days. Alternatively, should the Commission establish a 60-day shot clock for some subset of collocation applications that are not subject to the Spectrum Act, for example, applications that meet the relevant dimensional limits but are nevertheless not subject to the Spectrum Act because they seek to collocate equipment on non-tower structures that do not have any existing antennas? Should the Commission adopt different presumptively reasonable time frames for resolving applications for more narrowly defined classes of deployments such as (a) construction of new structures of varying heights (*e.g.,* 50 feet tall or less, versus 50 to 200 feet tall, versus taller than 200 feet); (b) construction of new structures in or near major utility or transportation rights of way, or that are in or near established clusters of similar structures, versus those that are not; (c) deployments in areas that are zoned for residential, commercial, or industrial use, or in areas where zoning or planning ordinances contemplate little or no additional development; or (d) replacements or removals that do not fall within the scope of Section 6409(a) of the Spectrum Act (for example, because they exceed the dimensional limits for requests covered by that provision)? The Commission also requests comment on whether to establish different time frames for (i) deployment of small cell or Distributed Antenna System (DAS) antennas or other small equipment versus more traditional, larger types of equipment or (ii) requests that include multiple proposed deployments or, equivalently, ''batches'' of requests submitted by a single provider to deploy multiple related facilities in different locations, versus proposals to deploy one facility. Should the Commission align the Commission's definitions of categories of deployments for which the Commission specifies reasonable time frames for local siting review with the Commission's definitions of the categories of deployments that are categorically excluded from environmental or historic preservation review?

12. The Commission seeks comment on what time periods would be reasonable (outside the Spectrum Act context) for any new categories of applications, and on what factors the Commission should consider in making such a decision. For what types or categories of wireless siting applications may shorter time periods be reasonable than those established in the *2009 Shot Clock Declaratory Ruling*? The Commission invites commenters to submit information to help guide the Commission's development of appropriate time frames for various categories of deployment. The Commission asks commenters to submit any available data on whether localities already recognize different categories of deployment in their processes, and on the actual amounts of time that localities have taken under particular circumstances.

13. The Commission also seeks comment on whether it should provide further guidance to address situations in which it is not clear when the shot clock should start running, or in which States and localities on one hand, and industry on the other, disagree on when the time for processing an application begins. For instance, the Commission has heard anecdotally that some jurisdictions impose a ''pre-application'' review process, during which they do not consider that a request for authorization has been filed. The Commission seeks comment on how the shot clocks should apply when there are such pre-application procedures; at what point should the clock begin to run? Are there other instances in which there is a lack of clarity or disagreement about when the clock begins to run? The Commission asks parties to address whether and how it should provide clarification of how the Commission's rules apply in those circumstances.

14. Finally, the Commission seeks comment on whether there are additional steps that should be considered to ensure that a deemed granted remedy achieves its purpose of expediting review. For example, to what extent can the attachment of conditions to approvals of local zoning applications slow the deployment of infrastructure?

Are applicants encountering requirements to comply with codes that are not reasonably related to health and safety? To the extent these conditions present challenges to deployment, are there steps the Commission can and should take to address such challenges?

3. Moratoria

15. Another concern relating to the ''reasonable periods of time'' for State and local agencies to act on siting applications is that some agencies may be continuing to impose ''moratoria'' on processing such applications, which inhibit the deployment of the infrastructure needed to provide robust wireless services. If so, such moratoria might contravene the *2014 Infrastructure Order,* which clearly stated that the shot clock deadlines for applications continue to ''run[] regardless of any moratorium.'' The Commission explained that this conclusion was ''consistent with a plain reading of the *2009 Declaratory Ruling,* which specifies the conditions for tolling and makes no provision for moratoria,'' and concluded that this means that ''applicants can challenge moratoria in court when the shot clock expires without State or local government action.'' The Commission sees no reason to depart from this conclusion. The Commission asks commenters to submit specific information about whether some localities are continuing to impose moratoria or other restrictions on the filing or processing of wireless siting applications, including refusing to accept applications due to resource constraints or due to the pendency of state or local legislation on siting issues, or insisting that applicants agree to tolling arrangements. Commenters should identify the specific entities engaging in such actions and describe the effect of such restrictions on parties' ability to deploy or upgrade network facilities and provide service to consumers. The Commission proposes to take any additional actions necessary, such as issuing an order or declaratory ruling providing more specific clarifications of the moratorium ban or preempting specific State or local moratoria. Commenters should discuss the benefits and detriments of any such additional measures and the Commission's legal authority to adopt them.

B. Reexamining National Historic Preservation Act and National Environmental Policy Act Review

16. In the following sections, the Commission undertakes a comprehensive fresh look at its rules and procedures implementing the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) as they relate to the Commission's implementation of Title III of the Act in the context of wireless infrastructure deployment, given the ongoing evolution in wireless infrastructure deployment towards smaller antennas and supporting structures as well as more frequent collocation on existing structures.

2. Updating Our Approach to the NHPA and NEPA

a. Need for Action

17. Many wireless providers have raised concerns about the Commission's environmental and historic preservation review processes because, they say, these reviews increase the costs of deployment and pose lengthy and often unnecessary delays, particularly for small facility deployments. A large number of wireless providers complain that the Tribal component of the Section 106 review process is particularly cumbersome and costly. The Commission seeks concrete information on the amount of time it takes for Tribal Nations to complete the Section 106 review process and on the costs that Tribal participation imposes on facilities deployment and on the provision of service. The Commission also seeks comment and specific information on the extent of benefits attributable to Tribal participation under the Commission's Section 106 procedures, particularly in terms of preventing damage to historic and culturally significant properties.

18. In addition, in May 2016, PTA–FLA filed a Petition for Declaratory Ruling arguing that ''Tribal fees have become so exorbitant in some cases to approach or even exceed the cost of actually erecting the tower.'' The Commission incorporates PTA–FLA's petition into this proceeding and seeks comment below on its proposals.

19. Some wireless providers contend that the SHPO review process also results in significant delays in deployment. The Commission seeks comment on the costs associated with SHPO review under the Commission's historic preservation review process, including direct financial costs; costs that delay imposes on carriers, tower owners, and the public; and any other costs. What are the costs associated with SHPO review of typical small facility deployments, and how do these compare with the costs for tower construction projects? Does the SHPO review process duplicate historic preservation review at the local level, particularly when local review is conducted by a Certified Local Government or a governmental authority that issues a Certificate of Appropriateness? In addition, the Commission seeks comment on how often SHPO review results in changes to a construction project due to a SHPO's identification of potential harm to historic properties or confers other public benefits.

20. Some argue that NEPA compliance imposes extraordinarily high costs on wireless providers and results in significant delays. The Commission seeks comment on the costs and relative benefits of the Commission's NEPA rules. What are the costs associated with NEPA compliance, other than costs associated with historic preservation review? How do the costs of NEPA compliance for tower construction compare to such costs for small facilities, and what specific benefits does the review confer?

21. Finally, some note that facilities requiring Federal review must also undergo pre-construction review by local governmental authorities, and assert that the inability to engage in these dual reviews simultaneously can add significant time to the process. The Commission seeks comment on whether local permitting, NEPA review, and Section 106 review processes can feasibly be conducted simultaneously, and on whether there are barriers preventing simultaneous review to the extent it is feasible. To what extent do significant siting changes or the potential for such changes during the local process make simultaneous review impractical or inefficient? Alternatively, have reviewing or consulting parties in the Commission's NEPA or Section 106 review processes declined to process an application until a local permitting process is complete? The Commission seeks comment on whether and under what circumstances simultaneous review would, on the whole, minimize delays and provide for a more efficient process and what steps, if any, the Commission should take to facilitate or enable such simultaneous review.

b. Process Reforms

(i) Tribal Fees

22. In this section, the Commission identifies and seeks comment on several issues relevant to fees paid to Tribal Nations in the Section 106 process. In addition to commenting on the legal framework and on potential resolutions to the issues, the Commission encourages commenters to provide specific factual information on current Tribal and industry practices and on the

impacts of those practices on licensees/tower owners, Tribal Nations, and timely deployment of advanced broadband services to all Americans. The Commission further welcomes information on the practices of other Federal agencies for the Commission's consideration.

23. Neither the NHPA nor the Advisory Council on Historic Preservation's (ACHP) implementing regulations address whether and under what circumstances Tribal Nations and Native Hawaiian Organizations (NHO) may seek compensation in connection with their participation in the Section 106 process. The ACHP has, however, issued guidance on the subject in the form of a memorandum in 2001 and as part of a handbook last issued in 2012. The ACHP 2001 Fee Guidance explains that ''the agency or applicant is not required to pay the tribe for providing its views.'' Further, ''[i]f the agency or applicant has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the Section 106 process.'' The guidance also states, however, that when a Tribal Nation ''fulfills the role of a consultant or contractor'' when conducting reviews, ''the tribe would seem to be justified in requiring payment for its services, just as any other contractor,'' and the company or agency ''should expect to pay for the work product.'' As explained below, the Commission seeks comment on how the ACHP's guidance can be applied in the context of the Commission's existing procedures and the proposals in this proceeding. Moreover, the Commission seeks comment on practices or procedures of other Federal agencies with respect to addressing the various roles a Tribal Nation may play in the Section 106 process and how to identify those services for which a Tribal Nation would be justified in seeking fees.

24. *Circumstances When Fees Are Requested.* The ACHP Handbook clearly states that no ''portion of the NHPA or the ACHP's regulations require[s] an agency or an applicant to pay for any form of tribal involvement.'' The Commission notes that ACHP guidance permits payments to a Tribal Nation when it fulfills a role similar to any other consultant or contractor. At what point in the Tower Construction Notification System (TCNS) process, if any, might a Tribal Nation act as a contractor or consultant? The Commission seeks comment on any facts that might affect the answer to that question. Does the particular request of the applicant determine whether a Tribal Nation is acting as a contractor or consultant? For example, the ACHP Handbook notes that if an applicant asks for ''specific information and documentation'' from a Tribal Nation, then the Tribal Nation is being treated as a contractor or consultant. Should the Commission infer if the applicant does not ask explicitly for such information and documentation, then no payment is necessary? The Commission also seeks comment on whether Tribal review for some types of deployment is less in the nature of a contractor or consultant. For example, would collocations or applications to site poles in rights of way be less likely to require services outside of the Tribal Nation's statutory role? In reviewing TCNS submissions for collocations or for siting poles in rights of way, under what circumstances might a Tribal Nation incur research costs for which it or another contractor might reasonably expect compensation?

25. Once a Tribal Nation or NHO has been notified of a project, an applicant must provide ''all information reasonably necessary for the Indian tribe or NHO to evaluate whether Historic Properties of religious and cultural significance may be affected'' and provide the Tribal Nation or NHO with a reasonable opportunity to respond. The Commission seeks comment on this requirement and on any modifications the Commission can and should make. In particular, the Commission seeks comment on whether the information in FCC Form 620 or FCC Form 621 is sufficient to meet the requirement that ''all information reasonably necessary . . .'' has been provided to the Tribal Nation. If not, are there modifications to these forms that would enable the Commission to meet this requirement? For example, should the FCC Form 620 and FCC Form 621 be amended to address the cultural resources report that an applicant prepares after completing a Field Survey? Additionally, the Commission seeks comment on whether a Tribal Nation's or NHO's review of the materials an applicant provides under the Nationwide Programmatic Agreement (NPA) Section VII is ever, and if so under what circumstances, the equivalent of asking the Tribal Nation or NHO to provide ''specific information and documentation'' like a contractor or consultant would, thereby entitling the Tribal Nation to seek compensation under ACHP guidance and the NPA. If a Tribal Nation chooses to conduct research, surveying, site visits or monitoring absent a request of the applicant, would such efforts require payment from the applicant? If an archaeological consultant conducted research, surveying, site visits, or monitoring absent a request of the applicant, would the applicant normally be required to pay that contractor or consultant? The Commission seeks comment on how the ACHP Handbook's statement that an ''applicant is free to refuse [payment] just as it may refuse to pay for an archaeological consultant,'' as well as its statement that ''the agency still retains the duties of obtaining the necessary information [to fulfill its Section 106 obligations] through reasonable methods,'' impacts the Commission's analysis of payments for Tribal participation.

26. The Commission notes that some Tribal Nations have indicated that they assess a flat upfront fee for all applications as a way to recover costs for their review of all TCNS applications, thereby eliminating the administrative burden of calculating actual costs for each case. The Commission seeks comment on this manner of cost recovery and whether such cost recovery is consistent with ACHP's fee guidance in its 2012 Handbook. Tribal Nations have also indicated that they have experienced difficulties in collecting compensation after providing service as a reason for upfront fee requests. The Commission seeks comment on whether this concern could be alleviated if the Commission clarifies when a Tribal Nation is acting under its statutory role and when it is being hired as a contractor or consultant under the Commission's process. The Commission also seeks comment on whether there might be a more appropriate way to address this concern.

27. What steps, if any, can the Commission take to issue the Commission's own guidance on the circumstances in the Commission's process when the Tribal Nation is expressing its views and no compensation by the agency or the applicant is required under ACHP guidance, and the circumstances where the Tribal Nation is acting in the role of a consultant or contractor and would be entitled to seek compensation? The Commission seeks comment on what bright-line test, if any, could be used. How does the reasonable and good faith standard for identification factor, if at all, into when a Tribal request for fees must be fulfilled in order to meet the standard? The Commission seeks comment on how disputes between the parties might be resolved when a Tribal Nation asserts that compensable effort is required to initiate or conclude Section 106 review. The Commission seeks comment on whether there are other

mechanisms to reduce the need for case-by-case analysis of fee disputes. While the Commission seeks comment generally on its process, the Commission also seeks comment particularly in the context of deployment of infrastructure for advanced communications networks.

28. To the extent that supplementing current ACHP guidance would help clarify when Tribal fees may be appropriate while both facilitating efficient deployment and recognizing Tribal interests, what input, if any, should the Commission provide to the ACHP on potential modifications to ACHP guidance?

29. *Amount of Fees Requested.* One factor that appears to be driving tower owners and licensees to seek Commission guidance in the fee area is not the mere existence of fees, but instead the amount of compensation sought by some Tribal Nations. How, if at all, does the ''reasonable and good faith'' standard for identification factor into or temper the amount of fees a Tribal Nation may seek in compensation? Are there any extant fee rates or schedules that might be of particular use to applicants and Tribal Nations in avoiding or resolving disputes regarding the amount of fees?

30. One party has requested in a petition that the Commission establish a fee schedule or otherwise resolve fee disputes. The Commission seeks comment on the legal framework applicable to this request. How might the impact of fee disputes on the deployment of infrastructure for advanced communications networks provide a basis for establishing a fee schedule in this context using the Communications Act as authority? Do the NHPA or other statutes limit the Commission's ability to establish such a fee schedule, and if so, how? How might the Miscellaneous Receipts Act (MRA) and General Accountability Office (GAO) precedent on improper augmentation temper the parameters of the Commission's actions in the area? The Commission seeks comment on whether other Federal agencies have established fee schedules or addressed the matter in any way, *e.g.,* either formally or informally or with respect to particular projects. How does due regard for Tribal sovereignty and the Government's treaty obligations affect the Commission's latitude for action in this area?

31. If the Commission were to establish a fee schedule, the Commission seeks comment on what weight or impact it might have on the Commission's process. For example, to what extent would fees at or below the level established by a fee schedule be considered presumptively reasonable? The Commission further seeks comment on what legal framework would be relevant to resolution of disputes concerning an upward or downward departure from the fee schedule. Should the fees specified in such a schedule serve as the presumptive maximum an applicant would be expected to pay, and under what circumstances might an upward departure from the fee schedule be appropriate? In addition to the concepts cited in the prior paragraph, are there other legal principles at play in the resolution of a dispute over a fee that might not arise in the context of merely setting a fee schedule? Have any other Federal agencies formally or informally resolved fee disputes between applicants and Tribal Nations, and if so, under what legal parameters? The Commission also seeks comment on what categories of services should be included, and whether the categories should be general or more specific. How would the Commission establish the appropriate level for fees? How could a fee schedule take into account both regional differences and changes in costs over time, *i.e.,* inflation? The Commission also seeks comment on whether it should only establish a model fee schedule and whether that would be consistent with the Tribal engagement requirements contemplated by Section 106.

32. *Geographic Areas of Interest.* Tribal Nations have increased their areas of interest within the TCNS as they have improved their understanding of their history and cultural heritage. As a result, applicants must sometimes contact upwards of 30 different Tribal Nations and complete the Section 106 process with each of them before being able to build their project. The Commission seeks comment on whether there are actions it can and should take to mitigate this burden while complying with the Commission's obligation under the NHPA and promoting the interests of all stakeholders. For example, the TCNS allows Tribal Nations and NHOs to select areas of interest at either a State or county level, but many Tribal Nations have asked to be notified of any project within entire States, and in a few instances, at least 20 different States. The Commission seeks comment on whether it could and should encourage, or require, the specification of areas of interest by county. The Commission also seeks comment on whether it should require some form of certification for areas of interest, and if so, what would be the default if a Tribal Nation fails to provide such certification.

33. The Commission seeks comment on whether TCNS should be modified to retain information on areas where concerns were raised and reviews conducted, so that the next filer knows whether there is a concern about cultural resources in that area or not. To what extent should applicants be able to rely on prior clearances, given that resources may continue to be added to the lists of historic properties? To the extent the Commission considers allowing applicants to rely on prior clearances, how should the Commission accommodate Tribal Nations' changes to their areas of interest? The Commission further seeks comment on how it can protect information connected to prior site reviews, especially those areas where a tower was not cleared because there may be artifacts. The Commission also seeks comment on whether it can make any other changes to TCNS or the Commission's procedures to improve the Tribal review process.

34. In addition, applicants routinely receive similar requests for compensation or compensable services from multiple Tribal Nations. While the Commission recognizes that each Tribal Nation is sovereign and may have different concerns, the Commission seeks comment on when it is necessary for an applicant to compensate multiple Tribal Nations for the same project or for the same activity related to that project, in particular site monitoring during construction. The Commission also seeks comment on whether, when multiple Tribal Nations request compensation to participate in the identification of Tribal historic properties of religious and cultural significance, whether there are mechanisms to gain efficiencies to ensure that duplicative review is not conducted by each Tribal Nation. Is it always necessary to obtain such services from all responding Tribal Nations that request to provide the service, and if so, why? Might one Tribal Nation when functioning in the role of a contractor perform certain services and share the work product with other Tribal Nations, *e.g.,* site monitoring? Could an applicant hire a qualified independent site monitor and share its work product with all Tribal Nations that are interested? How would the Commission ensure that such a monitor is qualified so that other Tribal Nations' interests will be adequately considered? Should the Commission require that such a monitor meet some established minimum standards? The Commission also seeks comment on whether monitors should

be required to prepare a written report and provide a copy to applicants.

35. *Remedies and Dispute Resolution.* While the ACHP has indicated that Tribal concurrence is not necessary to find that no historic properties of religious and cultural significance to Tribal Nations or NHOs would be affected by an undertaking, the agency is responsible for getting the information necessary to make that determination. The Commission seeks comment on how these two directives interact. The ACHP 2001 Fee Guidance states that ''if an agency or applicant attempts to consult with an Indian tribe and the tribe demands payment, the agency or applicant may refuse and move forward.'' The Commission seeks comment on whether and under what circumstances the Commission should authorize a project to proceed when a Tribal Nation refuses to respond to a Section 106 submittal without payment.

36. Under the NPA, when a Tribal Nation or NHO refuses to comment on the presence or absence of effects to historic properties without compensation, the applicant can refer the procedural disagreement to the Commission. The Commission seeks comment on whether it can adjudicate these referrals by evaluating whether the threshold of ''reasonable and good faith effort'' to identify historic properties has been met, given that the Tribal Nation can always request government-to-government consultation in the event of disagreement.

37. The Commission seeks comment on when it must engage in government-to-government consultation to resolve fee disputes, including when the compensation level for an identification activity has been established by a Tribal government.

38. *Negotiated Alternative.* The Commission notes that since September 2016, it has been facilitating meetings among Tribal and industry stakeholders with the goal of resolving challenges to Tribal requirements in the Section 106 review process, including disagreements over Tribal fees. The Commission seeks comment on whether it should continue seeking to develop consensus principles and, if so, how those principles should be reflected in practice. For example, the Commission seeks comment on whether it should seek to enter into agreements regarding best practices with Tribal Nations and their representatives.

(ii) Other NHPA Process Issues

(ii) Other NHPA Process Issues

39. *Lack of Response.* As discussed above, while both State Historic Preservation Officers (SHPOs) and Tribal Nations/NHOs are expected ordinarily to respond to contacts within 30 days, the NPA and the Commission's practice establish different processes to be followed when responses are not timely. The Commission seeks comment on what measures, if any, it should take to further speed either of these review processes, either by amending the NPA or otherwise, while assuring that potential effects on historic preservation are fully evaluated. What effect would such proposals have on addressing Section 106-associated delays to deployment? Should different time limits apply to different categories of construction, such as new towers, DAS and small cells, and collocations? Have advances in communications during the past decade, particularly with respect to communications via the Internet, changed reasonable expectations as to timeliness of responses and reasonable efforts to follow up?

40. With respect to Tribal Nations and NHOs, the Commission seeks comment on whether the processes established by the *2005 Declaratory Ruling* and the Good Faith Protocol adequately ensure the completion of Section 106 review when a Tribal Nation or NHO is non-responsive (*See* Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement, Declaratory Ruling, 20 FCC Rcd 16092 (2005) (*2005 Declaratory Ruling*)). The Commission seeks comment on whether the process can be revised in a manner that would permit applicants to self-certify their compliance with the Commission's Section 106 process and therefore proceed once they meet the Commission's notification requirements, without requiring Commission involvement, in a manner analogous to the ''deemed granted'' remedy for local governments. Would such an approach be consistent with the NPA and with the Commission's legal obligations? The Commission notes that Commission staff has discovered on numerous occasions that applicants have failed to perform their Tribal notifications as the Commission's processes require. If the Commission were to permit applicants to self-certify that they have completed their Tribal notification obligations, the Commission seeks comment on how it could ensure that the certifications are truthful and well-founded.

41. *Batching.* In the PTC Program Comment, the ACHP established a streamlined process for certain facilities associated with building out the Positive Train Control (PTC) railroad safety system (*See* Wireless Telecommunications Bureau Announces Adoption of Program Comment to Govern Review of Positive Train Control Wayside Facilities, WT Docket 13–240, Public Notice, 29 FCC Rcd 5340, Attachment (WTB 2014) (*PTC Program Comment*)). Among other aspects of the PTC Program Comment, eligible facilities may be submitted to SHPOs and through TCNS in batches.

42. The Commission seeks comment on whether it should adopt either a voluntary or mandatory batched submission process for non-PTC facilities. What benefits could be realized through the use of batching? What lessons can be learned from the experience with PTC batching? What guidelines should the Commission provide, if any, regarding the number of facilities to be included in a batch, their geographic proximity, or the size of eligible facilities? Should there be other conditions on eligibility, such as the nature of the location or the extent of ground disturbance? Should different time limits or fee guidelines, if any are adopted, apply to batched submissions? What changes to the Commission's current TCNS and E–106 forms and processes might facilitate batching? The Commission seeks comment on these and any other policy or operational issues associated with batching of proposed constructions.

43. *Other NHPA Process Reforms.* The Commission seeks comment on whether there are additional procedural changes that the Commission should consider to improve the Section 106 review process in a manner that does not compromise its integrity.

(iii) NEPA Process

44. The Commission seeks comment on ways to improve and further streamline its environmental compliance regulations while ensuring that the Commission meets its NEPA obligations. For example, should the Commission consider new categorical exclusions for small cells and DAS facilities? If so, under what conditions and on what basis? Should the Commission revise its rules so that an EA is not required for siting in a floodplain when appropriate engineering or mitigation requirements have been met? Are there other measures the Commission could take to reduce unnecessary processing burdens consistent with NEPA?

c. NHPA Exclusions for Small Facilities

45. As part of the effort to expedite further the process for deployment of wireless facilities, including small facility deployments in particular, the Commission seeks comment below on whether it should expand the categories of undertakings that are excluded from

Section 106 review. With respect to each of the potential exclusions discussed below, the Commission seeks comment on the alternatives of adopting additional exclusions directly in the Commission's rules, or incorporating into the Commission's rules a program alternative pursuant to the ACHP rules. The Commission may exclude activities from Section 106 review through rulemaking upon determining that they have no potential to cause effects to historic properties, assuming such properties are present. Where potential effects are foreseeable and likely to be minimal or not adverse, a program alternative under the ACHP's rules may be used to exclude activities from Section 106 review. The Commission seeks comment about whether the exclusions discussed below meet the test for an exclusion in 36 CFR 800.3(a)(1) or whether they would require a program alternative. To the extent that a program alternative would be necessary, the Commission seeks comment on which of the program alternatives authorized under the ACHP's rules would be appropriate. Particularly, for those potential exclusions where a program alternative would be required, commenters should discuss whether a new program alternative is necessary or whether an amendment to the NPA or a second amendment to the Collocation NPA would be the appropriate procedural mechanism (*See* Wireless Telecommunications Bureau Announces Execution of First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Public Notice, 31 FCC Rcd 4617 (WTB 2016) (Collocation NPA)).

(i) Pole Replacements

46. The Commission seeks comment on whether it should take further measures to tailor Section 106 review for pole replacements. As noted above, wireless companies are increasingly deploying new infrastructure using smaller antennas and supporting structures, including poles. Under the existing NPA, pole replacements are excluded from Section 106 review if the pole being replaced meets the definition of a ''tower'' under the NPA (constructed for the sole or primary purpose of supporting Commission-authorized antennas), provided that the pole being replaced went through Section 106 review. The NPA also more generally excludes construction in or near communications or utility rights of way, including pole replacements, with certain limitations. In particular, the construction is excluded if the facility does not constitute a substantial increase in size over nearby structures and it is not within the boundaries of a historic property. However, proposed facilities subject to this exclusion must complete the process of Tribal and NHO participation pursuant to the NPA.

47. The Commission seeks comment on whether additional steps to tailor Section 106 review for pole replacements would help serve the Commission's objective of facilitating wireless facility siting, while creating no or foreseeably minimal potential for adverse impacts to historic properties. For example, should the replacement of poles be excluded from Section 106 review, regardless of whether a pole is located in a historic district, provided that the replacement pole is not ''substantially larger'' than the pole it is replacing (as defined in the NPA)? The Commission envisions that this proposed exclusion could address replacements for poles that were constructed for a purpose other than supporting antennas, and thus are not ''towers'' within the NPA definition, but that also have (or will have) an antenna attached to them. This exclusion would also apply to pole replacements within rights of way, regardless of whether such replacements are in historic districts. The Commission seeks comment on this proposal and on whether any additional conditions would be appropriate. For example, consistent with the existing exclusion for replacement towers, commenters should discuss whether the exclusion should be limited to projects for which construction and excavation do not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction. How would the ''leased or owned property'' be defined within a utility right of way that may extend in a linear manner for miles?

(ii) Rights of Way

48. The Commission seeks comment on whether to expand the NPA exemption from Section 106 review for construction of wireless facilities in rights of way. First, as noted above, current provisions of the NPA exclude from Section 106 review construction in utility and communications rights of way subject to certain limitations. The Commission seeks comment on whether to adopt a similar exclusion from Section 106 review for construction or collocation of communications infrastructure in transportation rights of way and whether such an exclusion would be warranted under 36 CFR 800.3(a)(1). The Commission recognizes the Commission's previous determination in the *NPA Order* that, given the concentration of historic properties near many highways and railroads, it was not feasible to draft an exclusion for transportation corridors that would both significantly ease the burdens of the Section 106 process and sufficiently protect historic properties (*See* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Report and Order, 20 FCC Rcd 1073 (2004) (*NPA Order*)). The Commission also recognized, however, that transportation corridors are among the areas where customer demand for wireless service is highest, and thus where the need for new facilities is greatest.

49. In addition, since the *NPA Order,* wireless technologies have evolved and many wireless providers now deploy networks that use smaller antennas and compact radio equipment, including DAS and small cell systems. In view of the changed circumstances that are present today, the Commission finds that it is appropriate to reconsider whether the Commission can exclude construction of wireless facilities in transportation rights of way in a manner that guards against potential effects on historic properties. The Commission seeks comment on whether such an exclusion should be adopted, subject to certain conditions that would protect historic properties, and, if so, what those conditions should be. For example, should the Commission require that poles be installed by auguring or that cable or fiber be installed by plow or by directional drilling? What stipulations are needed if a deployment may be adjacent to or on National Register-eligible or listed buildings or structures, or in or near a historic district? Would it be appropriate to have any limitation on height, in addition to the requirement in the current rights of way exclusion that the structures not constitute a substantial increase in size over existing nearby structures? How should any new exclusion address Tribal and NHO participation, especially for historic properties with archaeological components? The Commission also seeks comment on how to define the boundaries of a transportation right of way for these purposes.

50. In addition to considering whether to adopt an exclusion for construction in transportation rights of way, the Commission also seeks comment on whether to amend the current right of way exclusion to apply regardless of whether the right of way is located on a historic property. As noted above, the current right of way exclusion applies

only if (1) the construction does not involve a substantial increase in size over nearby structures and (2) the deployment would not be located within the boundaries of a historic property. The Commission seeks comment on whether this provision should be amended to exclude from Section 106 review construction of a wireless facility in a utility or communications right of way located on a historic property, provided that the facility would not constitute a substantial increase in size over existing structures. To the extent that utility and communications rights of way on historic properties already are lined with utility poles and other infrastructure, would allowing additional infrastructure have the potential to create effects? Commenters should discuss whether, if the exclusion is extended to historic properties, any additional conditions would be appropriate to address concerns about potential effects, for example any further limitation on ground disturbance. If so, how should ground disturbance be defined? The Commission also seeks comment about whether Tribal and NHO participation should continue to be required if an exclusion is adopted for facilities constructed in utility or communications rights of way on historic properties.

(iii) Collocations

51. Next, the Commission seeks comment on options to further tailor the Commission's review of collocations of wireless antennas and associated equipment. The Commission's rules have long excluded most collocations of antennas from Section 106 review, recognizing the benefits to historic properties that accrue from using existing support structures rather than building new structures. The Commission has also recently expanded these exclusions in the First Amendment to the Collocation NPA to account for the smaller infrastructure associated with new technologies. The Commission seeks comment now on whether additional measures to further streamline review of collocations are appropriate, whether as a matter of 36 CFR 800.3(a)(1) or under program alternatives, including those discussed below and any other alternatives.

52. First, the Commission seeks comment on whether some or all collocations located between 50 and 250 feet from historic districts should be excluded from Section 106 review. Under current provisions in the Collocation NPA, Section 106 review continues to be required for collocations on buildings and other non-tower structures located within 250 feet of the boundary of a historic district to the extent those collocations do not meet the criteria established for small wireless antennas. The Commission seeks comment on whether this provision should be revised to exclude from Section 106 review collocations located up to 50 feet from the boundary of a historic district. The Commission seeks comment on this proposal and on whether any additional criteria should apply to an exclusion under these circumstances.

53. Next, the Commission seeks comment on the participation of Tribal Nations and NHOs in the review of collocations on historic properties or in or near historic districts. Although, as stated above, the Collocation NPA excludes most antenna collocations from routine historic preservation review under Section 106, collocations on historic properties or in or near historic districts are generally not excluded, and in these cases, the NPA provisions for Tribal and NHO participation continue to apply. Consistent with the Commission's effort in this NPRM to take a fresh look at ways to improve and facilitate the review process for wireless facility deployments, the Commission seeks comment on whether to exclude from the NPA procedures for Tribal and NHO participation collocations that are subject to Section 106 review solely because they are on historic properties or in or near historic districts, other than properties or districts identified in the National Register listing or determination of eligibility as having Tribal significance. For instance, should the Commission exclude from review non-substantial collocations on existing structures involving no ground disturbance or no new ground disturbance, or non-substantial collocations on new structures in urban rights of way or indoors? Should the Commission exclude from the NPA provisions for Tribal and NHO participation collocations of facilities on new structures in municipal rights of way in urban areas that involve no new ground disturbance and no substantial increase in size over other structures in the right of way? Should the Commission exclude collocations of facilities on new structures in industrial zones or facilities on new structures in or within 50 feet of existing utility rights of way? Commenters should discuss whether collocations in these circumstances have the potential to cause effects on properties significant to Tribal history or culture. If so, are any effects likely to be minimal or not adverse? Does the likelihood of adverse effects depend on the circumstances of the collocation, for example whether it will cause new ground disturbance? The Commission also seeks comment on alternatives to streamline procedures for Tribal and NHO participation in these cases, for example different guidance on fees or deeming a Tribal Nation or NHO to have no interest if it does not respond to a notification within a specified period of time.

54. Finally, the Commission seeks comment on whether the Commission can or should exclude from routine historic preservation review certain collocations that have received local approval. In particular, one possibility would be to exclude a collocation from Section 106 review, regardless of whether it is located on a historic property or in or near a historic district, provided that: (1) The proposed collocation has been reviewed and approved by a Certified Local Government that has jurisdiction over the project; or (2) the collocation has received approval, in the form of a Certificate of Appropriateness or other similar formal approval, from a local historic preservation review body that has reviewed the project pursuant to the standards set forth in a local preservation ordinance and has found that the proposed work is appropriate for the historic structure or district. By eliminating the need to go through historic preservation review at both local and Federal levels, creating an exclusion for collocations under these circumstances might create significant efficiencies in the historic preservation review process. The Commission seeks comment on this option and on any alternatives, including whether any additional conditions should apply and whether the process for engaging Tribal Nations and NHOs for these collocations should continue to be required.

d. Scope of Undertaking and Action

55. The Commission also invites comment on whether it should revisit its interpretation of the scope of the Commission's responsibility to review the effects of wireless facility construction under the NHPA and NEPA. In the *Pre-Construction Review Order,* the Commission retained a limited approval authority over facility construction to ensure environmental compliance in services that no longer generally require construction permits (*See* Amendment of Environmental Rules, Report and Order, 5 FCC Rcd 2942 (1990) (*Pre-Construction Review Order)*). In light of the evolution of technology in the last 27 years and the

corresponding changes in the nature and extent of wireless infrastructure deployment, the Commission seeks comment on whether this retention of authority is required and, if not, whether and how it should be adjusted. Commenters should address the costs of NEPA and NHPA compliance and its utility for environmental protection and historic preservation for different classes of facilities, as well as the extent of the Commission's responsibility to consider the effects of construction associated with the provision of licensed services under governing regulations and judicial precedent. For example, should facilities constructed under site-specific licenses be distinguished from those constructed under geographic area licenses? Can the Commission distinguish DAS and small cell facilities from larger structures for purposes of defining what constitutes the Commission's action or undertaking, and on what basis? Should review be required only when an EA triggering condition is met, as PTA–FLA suggests, and if so how would the licensee or applicant determine whether an EA is required in the absence of mandatory review? To the extent there is a policy basis for distinguishing among different types of facilities, would exclusions from or modifications to the NEPA and/or NHPA review processes be a more appropriate tool to reflect these differences? Are the standards for defining the scope of the Commission's undertaking or major Federal action different under the NHPA than under NEPA? The Commission also invites comment on whether to revisit the Commission's determination that registration of antenna structures constitutes the Commission's Federal action and undertaking so as to require environmental and historic preservation review of the registered towers' construction.

56. In addition, since the Commission's environmental rules were adopted, an industry has grown of non-licensees that are in the business of owning and managing communications sites, so that most commercial wireless towers and even smaller communications support structures are now owned from the time of their construction by non-licensees. The Commission seeks comment on how this business model affects the Commission's environmental and historic preservation compliance regime. For example, how does the requirement to perform environmental and historic preservation review prior to construction apply when the licensee is not the tower owner? If the tower is built pursuant to a contract or other understanding with a collocator, what marketplace or other effects would result from interpreting the environmental obligation to apply to the licensee? What about cases where there is no such agreement or understanding? Does the requirement in the Collocation NPA to perform review for collocations on towers that did not themselves complete Section 106 review create problems in administration or market distortions where the owner of the underlying tower may not have been subject to the Commission's rules at the time of construction? The Commission invites comment on these and any related questions.

3. Collocations on Twilight Towers

57. There are a large number of towers that were built between the adoption of the Collocation NPA in 2001 and when the NPA became effective in 2005 that either did not complete Section 106 review or for which documentation of Section 106 review is unavailable. These towers are often referred to as ''Twilight Towers.'' The Commission seeks comment on steps the Commission should take to develop a definitive solution for the Twilight Towers issue. As the Commission undertakes this process, the Commission's goal remains to develop a solution that will allow Twilight Towers to be used for collocations while respecting the integrity of the Section 106 process. Facilitating collocations on these towers will serve the public interest by making additional infrastructure available for wireless broadband services and the FirstNet public safety broadband network. Moreover, facilitating collocations on existing towers will reduce the need for new towers, lessening the impact of new construction on the environment and on locations with historical and cultural significance.

58. In particular, the Commission seeks comment on whether to treat collocations on towers built between March 16, 2001 and March 7, 2005 that did not go through Section 106 historic preservation review in the same manner as collocations on towers built prior to March 16, 2001 that did not go through review. Under this approach, collocations on such towers would generally be excluded from Section 106 historic preservation review, subject to the same exceptions that currently apply for collocations on towers built on or prior to March 16, 2001, *i.e.,* collocations would be excluded from Section 106 review unless (1) the mounting of the antenna will result in a substantial increase in size of the tower; (2) the tower has been determined by the Commission to have an adverse effect on one or more historic properties; (3) the tower is the subject of a pending environmental review or related proceeding before the Commission involving compliance with Section 106 of the National Historic Preservation Act; or (4) the collocation licensee or the owner of the tower has received written or electronic notification that the Commission is in receipt of a complaint from a member of the public, a Tribal Nation, a SHPO or the ACHP that the collocation has an adverse effect on one or more historic properties. The Commission seeks comment on whether allowing collocations without individual Section 106 review in these circumstances would rapidly make available a significant amount of additional infrastructure to support wireless broadband deployment without adverse impacts. In particular, the Commission notes that the vast majority of towers that have been reviewed under the NPA have had no adverse effects on historic properties, and the Commission is aware of no reason to believe that Twilight Towers are any different in that regard. Moreover, these towers have been standing for 12 years or more and, in the vast majority of cases, no adverse effects have been brought to the Commission's attention.

59. Although the Commission seeks comment on such an approach, the Commission is mindful of the concerns that have been expressed by Tribal Nations and SHPOs throughout the discussions on this matter that simply allowing collocations to proceed would not permit review in those cases where an underlying tower may have undetermined adverse effects. In particular, Tribal Nations have expressed concern that some of the towers that were constructed between 2001 and 2005 may have effects on properties of religious and cultural significance that have not been noticed because their people are far removed from their traditional homelands. The Commission seeks comment on these concerns. As an initial matter, the Commission seeks comment on the Commission's underlying assumption regarding the likelihood that Twilight Towers had in their construction or continue to have adverse effects that have not been noted. To the extent such effects exist, what is the likelihood that they could be mitigated, and what is the likelihood that a new collocation would exacerbate those effects?

60. The Commission further seeks comment on any alternative approaches. For example, should the Commission

considers a tower-by-tower process under which proposed collocations on Twilight Towers would trigger a streamlined, time-limited individual review, along the lines of the process discussed in the 2016 Twilight Towers draft term sheet? If the Commission were to adopt such an approach, what elements should be included? For example, some in the industry have recommended a tower-by-tower approach that is voluntary and allows tower owners to submit a tower for review as market conditions justify, involves same processes and systems that are used for new and modified towers, asks ACHP to direct SHPOs and Tribal Historic Preservation Officers (THPOs) to submit prompt comments on such towers, and imposes no monetary penalty on tower owners. The Commission seeks comment on whether to adopt this approach. Should towers be categorized, such that, for example, public safety towers receive priority for streamlined review? Alternatively, to what extent are there existing processes that function efficiently to allow collocations on Twilight Towers? Generally, given what the Commission says above about the text of the Commission's rule, the Commission does not anticipate taking any enforcement action or imposing any penalties based on good faith deployment during the Twilight Tower period.

61. The Commission also seeks comment on the procedural vehicle through which any solution should be implemented. Would permitting collocation on Twilight Towers require either an amendment to the Collocation NPA or another program alternative under 36 CFR 800.14(b)? Is one form of program alternative preferable to another, and if so, why? If the Commission were to pursue a streamlined or other alternative review procedure, would that require an amendment to the Collocation NPA or other program alternative?

4. Collocations on Other Non-Compliant Towers

62. Finally, the Commission invites comment on whether the Commission should take any measures, and if so what, to facilitate collocations on non-compliant towers constructed after March 7, 2005. The Commission notes that unlike in the case of the Twilight Towers, the rules in effect when these towers were constructed explicitly required compliance with the review procedures set forth in the NPA. The Commission invites commenters to propose procedures, including review processes, time frames, criteria for eligibility, and other measures, to address any or all of these towers.

II. Notice of Inquiry

63. In this section, the Commission examines and seeks comment on the scope of Sections 253(a) and 332(c)(7) of the Communications Act and any new or updated guidance or determinations the Commission should provide pursuant to its authority under those provisions, including through the issuance of a Declaratory Ruling.

A. Intersection of Sections 253(a) and 332(c)(7)

64. Both Section 253(a) and Section 332(c)(7) ban State or local regulations that ''prohibit or have the effect of prohibiting'' service. Both sections also proscribe State and local restrictions that unreasonably discriminate among service providers. These sections thus appear to impose the same substantive obligations on State and local governments, though the remedies provided under each are different. There are court decisions holding that ''the legal standard is the same under either [Section 253 or 332(c)(7)],'' and that there is ''nothing suggesting that Congress intended a different meaning of the text 'prohibit or have the effect of prohibiting' in the two statutory provisions, enacted at the same time, in the same statute.'' The Commission seeks comment on whether there is any reason to conclude that the substantive obligations of these two provisions differ, and if so in what way. Do they apply the same standards in the same or similar situations? Do they impose different standards in different situations? The Commission invites commenters to explain how and why. The Commission also seeks comment on the interaction between Sections 253 and 332(c)(7).

B. ''Prohibit or Have the Effect of Prohibiting''

65. A number of courts have interpreted the phrase ''prohibit or have the effect of prohibiting,'' as it appears in both Sections 253(a) and 332(c)(7), but they have not been consistent in their views. Under Section 253(a), the First, Second, and Tenth Circuits have held that a State or local legal requirement would be subject to preemption if it *may* have the effect of prohibiting the ability of an entity to provide telecommunications services, while the Eighth and Ninth Circuits have erected a higher burden and insisted that ''a plaintiff suing a municipality under Section 253(a) must show actual or effective prohibition, rather than the mere possibility of prohibition.'' By the same token, different courts have imposed inconsistent burdens of proof to establish that localities violated Section 332(c)(7) by improperly denying siting application. The First, Fourth, and Seventh Circuits have imposed a ''heavy burden'' of proof on applicants to establish a lack of alternative feasible sites, requiring them to show ''not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try.'' By contrast, the Second, Third, and Ninth Circuits have held that an applicant must show only that its proposed facilities are the ''least intrusive means'' for filling a coverage gap in light of the aesthetic or other values that the local authority seeks to serve. The Commission invites commenters to address these issues of statutory interpretation so the Commission may have the benefit of a full range of views from the interested parties as the Commission determines what action, if any, the Commission should take to resolve them. The Commission also invites parties to address whether there is some new theory altogether that the Commission should consider.

66. The Commission also seeks comment on the proper role of aesthetic considerations in the local approval process. The use of aesthetic considerations is not inherently improper; many courts have held that municipalities may, without necessarily violating Section 332(c)(7), deny siting applications on the grounds that the proposed facilities would adversely affect an area's aesthetic qualities, *provided* that such decisions are not founded merely on ''generalized concerns'' about aesthetics but are supported by ''substantial evidence contained in a written record'' about the impact of specific facilities on particular geographic areas or communities. The Commission seeks comment on whether it should provide more specific guidance on how to distinguish legitimate denials based on evidence of specific aesthetic impacts of proposed facilities, on the one hand, from mere ''generalized concerns,'' on the other.

67. Finally, the Commission notes that WTB's *Streamlining PN* sought comment on application processing fees and charges for the use of rights of way. The Commission invites parties to comment on similar issues relating to the application of section 332(c)(7)'s ''prohibit or have the effect of prohibiting'' language on infrastructure siting on properties beyond rights of way. For instance, the Commission

seeks comment on the up-front application fees that State or local government agencies impose on parties submitting applications for authority to construct or modify wireless facilities in locations other than rights of way. Can those fees, in some instances, ''prohibit or have the effect of prohibiting'' service? For instance, are those fees cost based? If commenters believe a particular State or locality's application fees are excessive, the Commission invites them to provide detailed explanations for that view and to explain how such fees might be inconsistent with section 332 of the Act. Relatedly, do wireless siting applicants pay fees comparable to those paid by other parties for similar applications, and if not, are there instances in which such fees violate section 332's prohibition of regulations that ''unreasonably discriminate among providers of functionally equivalent services''?

68. The Commission also seeks similar information about the recurring charges—as well as the other terms, conditions, or restrictions—that State or local government agencies impose for the siting of wireless facilities on publicly owned or controlled lands, structures such as light poles or water towers, or other resources other than rights of way. Do such fees or practices ''prohibit or have the effect of prohibiting'' service, or do they ''unreasonably discriminate among providers of functionally equivalent services? Are there disparities between the charges or other restrictions imposed on some parties by comparison with those imposed on others? Do any agencies impose charges or other requirements that commenting parties believe to be particularly burdensome, such as franchise fees based on a percentage of revenues? Are other aspects of the process for obtaining approval particularly burdensome? Commenters should explain their concerns in sufficient detail to allow State and local governments to respond and to allow the Commission to determine whether it should provide guidance on these issues.

C. ''Regulations'' and ''Other Legal Requirements''

69. The terms of Section 253(a) specify that a ''statute,'' ''regulation,'' or ''other legal requirement'' may be preempted, while the terms of Section 332(c)(7) refer to ''decisions'' concerning wireless facility siting and the ''regulation'' of siting. The Commission seeks comment on how those terms should be interpreted. For instance, do the terms ''statute,'' ''regulation,'' and ''legal requirement'' in Section 253(a) have essentially the same meaning as the parallel terms ''regulation'' and ''decisions'' in Section 332(c)(7)? The Commission has held in the past that the terminology in Section 253(a) quoted above ''recognizes that State and local barriers to entry could come from sources other than statutes and regulations'' and ''was meant to capture a broad range of state and local actions'' that could pose barriers to entry—including agreements with a single party that result in depriving other parties of access to rights of way. The Commission believes there is a reasonable basis for concluding that the same broad interpretation should apply to the language of Section 332, and the Commission seeks comment on this analysis.

70. The Commission also seeks comment on the extent to which these statutory provisions apply to States and localities acting in a proprietary versus regulatory capacity, and on what constitutes a proprietary capacity. In the *2014 Infrastructure Order,* the Commission opined that the Spectrum Act and the rules and policies implementing it apply to localities' actions on siting applications when acting in their capacities as land-use regulators, but not when acting as managers of land or property that they own and operate primarily in their proprietary roles. The Order cited cases indicating that ''Sections 253 and 332(c)(7) do not preempt non-regulatory decisions of a State or locality acting in its proprietary capacity.'' The Commission seeks comment on whether the Commission should reaffirm or modify the *2014 Infrastructure Order*'s characterization of the distinction between State and local governments' regulatory roles versus their proprietary roles as ''owners'' of public resources. How should the line be drawn in the context of properties such as public rights of way (*e.g.,* highways and city streets), municipally-owned lampposts or water towers, or utility conduits? Should a distinction between regulatory and proprietary be drawn on the basis of whether State or local actions advance those government entities' interests as participants in a particular sphere of economic activity (proprietary), by contrast with their interests in overseeing the use of public resources (regulatory)? What about requests for proposals (RFPs) or contracts involving state or local entities? The Commission invites commenters to identify any States or local governments that have imposed restrictions on the installation of new facilities or the upgrading of existing facilities in public rights of way, and describe those restrictions and their impacts. Do such restrictions have characteristics or effects that are comparable to moratoria on processing applications?

D. Unreasonable Discrimination

71. The Commission seeks comment on whether certain types of facially neutral criteria that some localities may be applying when reviewing and evaluating wireless siting applications could run afoul of Section 253, Section 332(c)(7), or another provision of the Act. For instance, the Commission asks commenters to identify any State or local regulations that single out telecom-related deployment for more burdensome treatment than non-telecom deployments that have the same or similar impacts on land use, to explain how, and to address whether this type of asymmetric treatment violates Federal law.

72. The Commission also seeks comment on the extent to which localities may be seeking to restrict the deployment of utility or communications facilities above ground and attempt to relocate electric, wireline telephone, and other utility lines in that area to underground conduits. Obviously, it is impossible to operate wireless network facilities underground. Undergrounding of utility lines seems to place a premium on access to those facilities that remain above ground, such as municipally-owned street lights. Is there a particular way that Section 253 or 332(c)(7) should apply in that circumstance? More generally, the Commission seeks comment on parties' experience with undergrounding requirements, including how wireless facilities have been treated in communities that require undergrounding of utilities. The Commission also seeks comment on whether and how the Communications Act applies in such instances. For instance, may localities deny applications to construct new above-ground wireless structures in such areas, or deny applications to install collocated equipment on structures that may eventually be dismantled? Could ''undergrounding'' plans ''prohibit or have the effect of prohibiting'' service by causing suitable sites for wireless antennas to become scarce? The Commission seeks comment on parties' experiences with undergrounding generally.

73. Section 332(c)(7)(B)(i)(I) prohibits States and localities from unreasonably discriminating among providers of ''functionally equivalent services.'' The

Commission seeks comment on whether parties have encountered such discrimination, and ask that they provide specific examples. The Commission also seeks comment on what constitutes ''functionally equivalent services'' for this purpose. For instance, should entities that are considered to be utilities be viewed as an appropriate comparison? For the limited purpose of applying Section 332(c)(7)(B)(i)(I), can wireless and wireline services be considered ''functionally equivalent'' in some circumstances? Which types of discrimination are reasonable and which are unreasonable?

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

74. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities of the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

1. Need for, and Objectives of, the Proposed Rules

75. In this NPRM, the Commission examines how it may further remove or reduce regulatory impediments to wireless infrastructure investment and deployment in order to promote the rapid deployment of advanced mobile broadband service to all Americans. First, the NPRM seeks comment on certain measures or clarifications to expedite State and local processing of wireless facility siting applications pursuant to the Commission's authority under 332 of the Communications Act, including a ''deemed granted'' remedy in cases of unreasonable delay. Next, the Commission undertakes a comprehensive fresh look at the Commission's rules and procedures implementing the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (Section 106). As part of this review, the Commission seeks comment on potential measures to improve or clarify the Commission's Section 106 process, including in the area of fees paid to Tribal Nations in connection with their participation in the process, cases involving lack of response by relevant parties including affected Tribal Nations, and batched processing. The Commission also seeks comment on possible additional exclusions from Section 106 review, and the Commission reexamines the scope of the Commission's responsibility to review the effects of wireless facility construction under the NHPA and NEPA. Finally, the NPRM seeks comment on so-called ''Twilight Towers,'' wireless towers that were constructed during a time when the process for Section 106 review was unclear, that may not have completed Section 106 review as a result, and that are therefore not currently available for collocation without first undergoing review. The Commission seeks comment on various options addressing Twilight Towers, including whether to exclude collocations on such towers from Section 106 historic preservation review, subject to certain exceptions, or alternatively subjecting collocations on Twilight Towers to a streamlined, time-limited review. The Commission expects the measures on which the Commission seeks comment in this NPRM to be only a part of the Commission's efforts to expedite wireless infrastructure deployment and the Commission invites commenters to propose other innovative approaches to expediting deployment.

2. Legal Basis

76. The authority for the actions taken in this NPRM is contained in Sections 1, 2, 4(i), 7, 201, 253, 301, 303, 309, and 332 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i), 157, 201, 253, 301, 303, 309, and 332, Section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

77. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, the Commission provides a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

78. The NPRM seeks comment on potential rule changes regarding State, local, and Federal regulation of the siting and deployment of communications towers and other wireless facilities. Due to the number and diversity of owners of such infrastructure and other responsible parties, particularly small entities that are Commission licensees as well as non-licensees, the Commission classifies and quantifies them in the remainder of this section. The NPRM seeks comment on the Commission's description and estimate of the number of small entities that may be affected by the Commission's actions in this proceeding.

79. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

80. *Wireless Telecommunications Carriers (except Satellite).* This industry

comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

81. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by the Commission's actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

82. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under Part 95 of the Commission's rules. These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service. There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore the Commission applies the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission notes that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by the Commission's actions in this proceeding.

83. *Public Safety Radio Licensees.* Public Safety Radio Pool licensees as a general matter, include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. For this category the Commission applies the SBA's definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications and for which the small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, the Commission includes under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services. There are 3,121 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of March 29, 2017. The Commission estimates that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

84. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA's definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications and for which the small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. According to the Commission's records, there are a total of 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz, which is the range affected by this NPRM. The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

85. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses.

86. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define ''small entity'' for MAS licensees as an entity that has average annual gross revenues of less than $15 million over the three previous calendar years. A ''Very small business'' is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than $3

million over the preceding three calendar years. The SBA has approved these definitions. The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS licenses in 176 EAs was conducted. Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

87. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity is the ''Wireless Telecommunications Carriers (except satellite)'' definition under the SBA rules. Under that SBA category, a business is small if it has 1,500 or fewer employees. For this category, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the Commission's action.

88. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

89. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

90. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

91. *EBS*—The SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data for the previous category of Cable and Other Program Distribution and its associated size standard which was all such firms having $13.5 million or less in annual receipts. According to U.S. Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

92. *Location and Monitoring Service (LMS).* LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million. A ''very small business'' is

defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

93. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more. Based on this data the Commission therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

94. The Commission has estimated the number of licensed commercial television stations to be 1,384. Of this total, 1,264 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

95. The Commission notes, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

96. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

97. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of June 2, 2016, about 11,386 (or about 99.9 percent) of 11,395 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,415. The Commission notes that it has also estimated the number of licensed NCE radio stations to be 4,101. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

98. The Commission also notes, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a ''small business,'' an entity may not be dominant in its field of operation. The Commission further notes, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus the Commission's estimate of small businesses may therefore be over-inclusive.

99. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations. This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $38.5 million dollars or less. U.S. Census data for 2012 indicate that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Based on U.S. Census data, the Commission concludes that the majority of FM Translator Stations and Low Power FM Stations are small.

100. *Multichannel Video Distribution and Data Service (MVDDS).* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of

MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

101. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

102. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the Commission's action can be considered small.

103. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), the 39 GHz Service (39 GHz), the 24 GHz Service, and the Millimeter Wave Service where licensees can choose between common carrier and non-common carrier status. The SBA nor the Commission has defined a small business size standard for microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012, show that there were 967 firms in this category that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the Commission's proposed action.

104. According to Commission data in the Universal Licensing System (ULS) as of September 22, 2015 there were approximately 61,970 common carrier fixed licensees, 62,909 private and public safety operational-fixed licensees, 20,349 broadcast auxiliary radio licensees, 412 LMDS licenses, 35 DEMS licenses, 870 39 GHz licenses, and five 24 GHz licenses, and 408 Millimeter Wave licenses in the microwave services. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

105. *Non-Licensee Owners of Towers and Other Infrastructure.* Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission's Antenna Structure Registration (ASR) system and comply with applicable rules regarding review for impact on the environment and historic properties.

106. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a ''Constructed'' status and 13,987 registration records reflecting a ''Granted, Not Constructed'' status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which the Commission can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require ASR registration, the Commission does not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which the Commission seeks comment. Moreover, the SBA has not developed a size standard for small businesses in the category ''Tower Owners.'' Therefore, the Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for ''All Other Telecommunications.'' The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the Commission's action can be considered small. In addition, there may be other non-licensee owners of other wireless infrastructure, including DAS and small cells, that might be affected by the measures on which the Commission seeks comment. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

107. The NPRM seeks comment on potential rule changes that may affect reporting, recordkeeping and other compliance requirements. Specifically the NPRM seeks comment on a specific NHPA submission process known as batching. Currently, a streamlined process for certain facilities associated

with building out the Positive Train Control (PTC) railroad safety system is in effect whereby eligible facilities may be submitted to State Historic Preservation Officers (SHPOs) and through the Tower Construction Notification System (TCNS) in batches instead of individually. The NPRM seeks comment on whether the Commission should require SHPOs and Tribal Historic Preservation Officers (THPOs) to review non-PTC facilities in batched submissions as well. If adopted, this may require modifications to reporting or other compliance requirements for small entities and or jurisdictions to enable such submissions. The Commission anticipates that batch rather than individual submissions will add no additional burden to small entities and may reduce the cost and delay associated with the deployment of wireless infrastructure. In addition, the NPRM seeks comment on whether the current Section 106 process can be revised in a manner that would permit applicants to self-certify their compliance with the Commission's Section 106 process and therefore proceed once they meet the Commission's notification requirements, without requiring Commission involvement. This self-certifying process may also require additional reporting or other compliance requirements for small entities. Similarly, the Commission anticipates that a self-certification process will reduce the cost and delay associated with the deployment of wireless infrastructure for small entities by expediting the current Section 106 process.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

108. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

109. In this proceeding, the Commission seeks to examine regulatory impediments to wireless infrastructure investment and deployment, and how the Commission may remove or reduce such impediments consistent with the law and the public interest. The Commission anticipates that the steps on which the NPRM seeks comment will help reduce burdens on small entities that may need to deploy wireless infrastructure by reducing the cost and delay associated with the deployment of such infrastructure. As discussed below, however, certain proposals may impose regulatory compliance costs on small jurisdictions.

110. The NPRM seeks comment on potential ways to expedite wireless facility deployment. First, it seeks comment on certain measures or clarifications to expedite State and local processing of wireless facility siting applications pursuant to the Commission's authority under Section 332 of the Communications Act. Specifically, the NPRM proposes to adopt one or more of three mechanisms for implementing a ''deemed granted'' remedy for State and local agencies' failure to satisfy their obligations under Section 332(c)(7)(B)(ii) to act on applications outside the context of the Spectrum Act, including irrebuttable presumption, lapse of State and local governments' authority, and a preemption rule. The NPRM also seeks comment on how to quantify a ''reasonable period of time'' within which to act on siting applications. Specifically, the NPRM asks commenters to discuss whether the Commission should consider adopting different time frames for review of facility deployments not covered by Section 6409 of the Spectrum Act, by identifying more narrowly defined classes of deployments and distinct reasonable time frames to govern such classes. The NPRM also seeks comment on what time periods would be reasonable (outside the Spectrum Act context) for any new categories of applications, and on what factors the Commission should consider in making such a decision. The NPRM also seeks comment on whether the Commission should provide further guidance to address situations in which it is not clear when the shot clock should start running, or in which States and localities on one hand, and industry on the other, disagree on when the time for processing an application begins, and on whether there are additional steps that should be considered to ensure that a deemed granted remedy achieves its purpose of expediting review.

111. In addition, the NPRM seeks comment on Moratoria. The Commission clarified in the *2014 Infrastructure Order* that the shot clock deadline applicable to each application ''runs regardless of any moratorium.'' The NPRM asks commenters to submit specific information about whether some localities are continuing to impose moratoria or other restrictions on the filing or processing of wireless siting applications, including identification of the specific entities engaging in such actions and description of the effect of such restrictions on parties' ability to deploy network facilities and provide service to consumers. The NPRM also proposes to take any additional actions necessary, such as issuing an order or declaratory ruling providing more specific clarifications of the moratorium ban or preempting specific State or local moratoria. The proposed measures should reduce existing regulatory costs for small entities that construct or deploy wireless infrastructure. The Commission invites commenters to discuss the economic impact of any of these proposed measures on small entities, including small jurisdictions, and on any alternatives that would reduce the economic impact on such entities.

112. Second, the NPRM undertakes a fresh look at the Commission's rules and procedures implementing NEPA and the NHPA as they relate to the Commission's implementation of Title III of the Act in the context of wireless infrastructure deployment. The NPRM seeks comment on potential measures in several areas that could improve the efficiency of the Commission's review under the NHPA and NEPA, including in the areas of fees, addressing delays, and batched processing. Specifically, the NPRM seeks comment on the costs, benefits, and time requirements associated with the historic preservation review process under Section 106 of the NHPA, including SHPO and Tribal Nation review, as well as on the costs and relative benefits of the Commission's NEPA rules. The NPRM also seeks comment on potential process reforms regarding Tribal Fees, including fee amounts, when fees are requested, the legal framework of potential fee schedules, the delineation of Tribal Nation's geographic area of interest, and on potential remedies, dispute resolution, and possible negotiated alternatives.

113. The NPRM then seeks comment on other possible reforms to the Commission's NHPA process that may make it faster, including time limits and self-certification when no response to a Section 106 submission is provided, on whether the Commission should require SHPOs and THPOs to review non-PTC facilities in batched submissions, and if so, how such a process should work and

what sort of facilities would be eligible, and finally, whether there are additional procedural changes that the Commission should consider to improve the Section 106 review process in a manner that does not compromise its integrity.

114. Further, the NPRM seeks comment on ways to improve and further streamline the Commission's environmental compliance regulations while ensuring the Commission meets its NEPA obligations. Toward that end, the NPRM seeks comment on whether to revise the Commission's rules so that an EA is not required for siting in a floodplain when appropriate engineering or mitigation requirements have been met and on whether to expand the categories of undertakings that are excluded from Section 106 review, to include pole replacements, deployments in rights-of-way, and collocations based on their minimal potential to adversely affect historic properties. The NPRM also seeks comment on whether the Commission should revisit the Commission's interpretation of the scope of the Commission's responsibility to review the effects of wireless facility construction under the NHPA and NEPA. These potential changes to the Commission's rules and procedures implementing NEPA and the NHPA would reduce environmental compliance costs on entities that construct or deploy wireless infrastructure. These potential revisions are likely to provide an even greater benefit for small entities that may not have the compliance resources and economies of scale of larger entities. The Commission invites comment on ways in which the Commission can achieve its goals, but at the same time further reduce the burdens on small entities.

115. Third, the NPRM seeks comment on steps the Commission should take to develop a definitive solution for the Twilight Towers issue that will allow Twilight Towers to be used for collocations while respecting the integrity of the Section 106 process. Facilitating collocations on these towers will serve the public interest by making additional infrastructure available for wireless broadband services and the FirstNet public safety broadband network, as well as reduce the need for new towers, lessening the impact of new construction on the environment and on locations with historical and cultural significance, thereby reducing the associated regulatory burden, particularly the burden on small entities.

116. In particular, the NPRM seeks comment on whether to treat collocations on towers built between March 16, 2001 and March 7, 2005 that did not go through Section 106 historic preservation review in the same manner as collocations on towers built prior to March 16, 2001 that did not go through review. Under this approach, collocations on such towers would generally be excluded from Section 106 historic preservation review, subject to the same exceptions that currently apply for collocations on towers built on or prior to March 16, 2001. The Commission seeks comment on whether allowing collocations without individual Section 106 review in these circumstances would rapidly make available a significant amount of additional infrastructure to support wireless broadband deployment without adverse impacts. The NPRM also seeks comment on any alternative approaches and on the procedural vehicle through which any solution should be implemented. Finally, the NPRM invites comment on what measures, if any, should be taken to facilitate collocations on non-compliant towers constructed after March 7, 2005, including whether the Commission should pursue an alternative review process, or any other alternative approach, for any or all of these towers. These proposals would reduce the environmental compliance costs associated with collocations, especially for small entities that have limited financial resources. The Commission invites commenters to discuss the economic impact of any of the proposals for the solution to the Twilight Towers issue on small entities, including small jurisdictions, and on any alternatives that would reduce the economic impact on such entities.

117. For the options discussed in this NPRM, the Commission seeks comment on the effect or burden of the prospective regulation on small entities, including small jurisdictions, the extent to which the regulation would relieve burdens on small entities, and whether there are any alternatives the Commission could implement that could achieve the Commission's goals while at the same time minimizing or further reducing the burdens on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

118. None.

B. Initial Paperwork Reduction Act Analysis

119. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Other Procedural Matters

1. Ex Parte Rules—Permit-But-Disclose

120. Except to the limited extent described in the next paragraph, this proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants

in this proceeding should familiarize themselves with the Commission's ex parte rules.

121. In light of the Commission's trust relationship with Tribal Nations and Native Hawaiian Organizations (NHOs), and the Commission's obligation to engage in government-to-government consultation with them, the Commission finds that the public interest requires a limited modification of the ex parte rules in this proceeding. Tribal Nations and NHOs, like other interested parties, should file comments, reply comments, and ex parte presentations in the record in order to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process. But the Commission will exempt ex parte presentations involving elected and appointed leaders and duly appointed representatives of federally-recognized Tribal Nations and NHOs from the disclosure requirements in permit-but-disclose proceedings and the prohibitions during the Sunshine Agenda period. Specifically, presentations from elected and appointed leaders or duly appointed representatives of federally-recognized Tribal Nations or NHOs to Commission decision makers shall be exempt from disclosure. To be clear, while the Commission recognizes that consultation is critically important, the Commission emphasizes that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

IV. Ordering Clauses

122. Accordingly, *it is ordered,* pursuant to Sections 1, 2, 4(i), 7, 201, 253, 301, 303, 309, and 332 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i), 157, 201, 253, 301, 303, 309, and 332, Section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108, that this Notice of Proposed Rulemaking and Notice of Inquiry *is hereby adopted*.

123. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–09431 Filed 5–9–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR 1, 15, 20, and 54

[GN Docket No. 16–46; FCC 17–46]

FCC Seeks Comment and Data on Actions To Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: The Federal Communications Commission (FCC) seeks comment, data, and information on a variety of regulatory, policy, and infrastructure issues related to the emerging broadband-enabled health and care ecosystem. The FCC seeks to ensure that consumers—from major cities to rural and remote areas, Tribal lands, and underserved regions—can access potentially lifesaving health technologies and services, like telehealth and telemedicine, which are enabled by broadband connectivity. The anticipated record will allow the Commission and its Connect2HealthFCC Task Force (Task Force) to gain a broader understanding about the current state of broadband health connectivity. The record will also be used by the Task Force to make future recommendations to the Commission.

DATES: Submit comments on or before May 24, 2017, and reply comments on or before June 8, 2017.

ADDRESSES: You may submit comments, identified by GN Docket No. 16–46, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/* (click the ''submit a filing'' tab). Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: GN Docket No. 16–46.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8:00 a.m. to 7:00 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail must be addressed to 445 12th Street SW., Washington, DC 20554.

Additional Filing Instruction: To the extent feasible, parties should email a copy of their comments to the Task Force's email box, at *connect2health@fcc.gov*. In the email, please insert ''Comments in GN Docket No. 16–46'' in the subject line. Copies of all filings will be available in GN Docket No. 16–46 through ECFS and are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554, telephone (202) 418–0270. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email at: *fcc504@fcc.gov;* phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: For further information about this Document, please contact Ben Bartolome, Special Counsel, Connect2HealthFCC Task Force, at (770) 935–3383, or via email at *connect2health@fcc.gov* (inserting ''Question re GN Docket No. 16–46'' in the subject line). Press inquiries should be directed to Katie Gorscak, Communications Director, Connect2HealthFCC Task Force, at (202)

418–2156, or via email at *Katie.Gorscak@fcc.gov.* For additional information about the Connect2HealthFCC Task Force, please visit the FCC's broadband health hub at *http://www.fcc.gov/health.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, FCC 17–46, in GN Docket No. 16–46, released on April 24, 2017. The full text of this document is available on the Internet at the Commission's Web site, at *https://www.fcc.gov/document/fcc-seeks-comment-accelerating-broadband-health-tech-availability*; and it is also accessible from the Connect2HealthFCC Task Force's Web page, at *https://www.fcc.gov/health/public-notice.* The full text is also available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 (Telephone: 202–418–0270; TTY: 202–418–2555).

Overview

Broadband networks are increasingly important to our national well-being and everyday lives. As such, we must maximize their availability and ensure that all Americans can take advantage of the variety of services that broadband enables, including 21st century health care. In this Document, the FCC seeks information on how it can help enable the adoption and accessibility of broadband-enabled health care solutions, especially in rural and other underserved areas of the country. We expect to use this information to identify actions that the Commission can take to promote this important goal.

Ensuring that everyone is connected to the people, services, and information they need to get well and stay healthy is an important challenge facing our nation. Technology innovations in clinical practice and care delivery coupled with burgeoning consumer reliance on mHealth and health information technology (or healthIT) are fundamentally changing the face of health care, and a widespread, accessible broadband infrastructure is critical to this ongoing shift. Indeed, the future of modern health care appears to be fundamentally premised on the widespread availability and accessibility of high-speed connectivity. By some estimates, broadband-enabled health information technology can help to improve the quality of health care and significantly lower health care costs by hundreds of billions of dollars in the coming decades. However, the United States remains behind some advanced countries in the adoption of such technology.

As discussed in this Document, the Commission plays an important role in improving the quality of health care and enabling health care innovation through the universal service program, spectrum licensing, and other activities. In order to perform these and other important roles in the health technology space, the Commission should continue to evaluate the nation's broadband health infrastructure and to understand the ongoing technology-based transformation in health care delivery. This will better assure that consumers—from major cities to rural and remote areas, Tribal lands, and underserved regions—can access potentially lifesaving health technologies and services, like telehealth and telemedicine. Leading this effort on behalf of the agency is its Connect2HealthFCC Task Force. Among other things, the Task Force is charged with charting the broadband future of ''health *and* care'' in order to ensure that the agency stays ahead of the health technology curve. We use the phrase ''health *and* care'' deliberately in this Document to reflect and include the broad range of participants in the emerging broadband health ecosystem, including providers (*e.g.,* health systems, community health centers, clinicians, pharmacists, nutritionists, allied health professionals); public health and social service agencies and organizations; innovators and entrepreneurs; academic and research facilities; state and local policymakers; patients and their caregivers; as well as consumers who seek support to prevent disease and maintain optimum health.

This Document seeks comment, data, and information on a broad range of regulatory, policy, technical, and infrastructure issues related to the emerging broadband-enabled health *and* care ecosystem. Commenters should address the agency's authority on all issues raised in this Notice. The comment, data, and information requested are intended to provide the Commission with a broader understanding and perspective on the current state of broadband health technology and other related issues; and it will also inform the Task Force's work and recommendations.

The Broadband Health Imperative

Broadband holds promise for enabling health care solutions and advanced technologies that can help to meet America's growing health care needs. Health care accounts for a significant percentage of the U.S. gross domestic product and health care costs are projected to increase. Studies confirm that the United States has a serious health care supply problem. By some estimates, the country could face a shortage of up to 94,700 physicians by 2025, and the forecast is worse for rural communities. The healthcare provider shortfall is likely to disproportionately affect rural and remote areas which are already medically-underserved.

At the same time, demand for health care services is increasing. Today, over 320 million people in the United States could, at any time, utilize health care services, with one person added every 12 seconds (net), yet we only have approximately 280,000 primary care physicians to meet the needs. By the year 2060, the number of people living in the United States is projected to increase by 100 million (resulting in a total of 425+ million people), further exacerbating the projected physician shortage concern. To further complicate matters, over 100 million Americans are dealing with chronic diseases and conditions (*e.g.,* heart disease, stroke, cancer, obesity, diabetes, and arthritis); and despite best efforts, health care disparities persist across various geographic regions and ethnic groups. While many individuals struggle with one chronic illness, older Americans often face from two to as many as five chronic diseases at the same time. By 2030, one out of every five Americans (or 71 million) will be over the age of 65, and 20 million will be over the age of 80.

While broadband is not a complete answer, there are a growing number of broadband-enabled solutions that can play an important role in improving population health; addressing health needs beyond the hospital; expanding access to primary, acute, preventive and specialist care, especially for those Americans living in rural and underserved areas; providing more cost-effective solutions; improving the quality of care; and better engaging consumers in their health. Put simply, health care is being transformed by the availability and accessibility of broadband-enabled services and technologies and the development of life-saving wireless medical devices.

Indeed, we are already realizing some of the tremendous benefits that broadband-enabled health technologies and innovative wireless medical devices have to offer: Electronic Health Record (EHR) systems can track and transmit vast amounts of patient clinical data. X-rays, MRIs, and CAT scans can be transmitted seamlessly to specialists at a distant hospital. Telemedicine and

telehealth programs and services provide opportunities to close access to care gaps and facilitate specialized training. Medical providers are able to prescribe medications electronically, saving time and money. Surgeons are able to perform operations miles away from patients via robotics. Self-service health kiosks are becoming increasingly available at pharmacies and grocery chains, providing additional access points for primary care and disease screenings. Remote patient monitoring applications and services are reducing hospital readmissions as well as travel and associated expenses for patients. Mobile devices like smartphones and personal data assistants are transforming the way physicians manage patient care; they are also empowering and engaging consumers to take a more active role in managing their own health. Implant or body-worn monitoring, therapeutic, and treatment technologies include wireless blood glucose monitors and automated insulin pumps. ''Ingestibles'' and ''smart pills'' (broadband-enabled digital tools that are swallowed by the patient) use wireless technology to monitor internal reactions in real-time, dispense medication, and provide other granular health data.

Veterans, in particular, have seen tangible benefits from telemedicine. Most notably, critical mental health services are now accessible via telemedicine to those veterans living in rural areas or abroad. In fiscal year 2014, more than 690,000 military veterans accessed the U.S. Department of Veterans Administration's (VA) health care network using telemedicine programs, reflecting more than 1.7 million episodes of care. The Veterans Health Administration notes that ''[telemedicine] technology is now considered 'mission critical' for effectively delivering quality healthcare to veterans, particularly for those in rural or underserved areas.''

These are just some of the opportunities that broadband-enabled services and health-related communications technologies and devices offer, especially for those living in rural and underserved areas, low density populations, and Tribal lands; for older Americans; persons with disabilities; military veterans; and the economically disadvantaged—all of whom have traditionally faced significant health *and* care challenges. We endeavor to foster the development and accessibility of these and other emerging communications-based technologies throughout the country. The work ahead, however, can only be successful if it combines the efforts of all levels of government, industry, innovators and entrepreneurs, academia, consumers, and the health care community. Accordingly, we seek broad public and private stakeholder input and collaboration on the issues discussed below.

Request for Comment and Data

As part of its charge, the Connect2HealthFCC Task Force is focused on the following objectives: (1) Promoting effective policy and regulatory solutions that encourage broadband adoption and promote health IT; (2) identifying regulatory barriers (and incentives) to the deployment of radio frequency (RF)-enabled advanced health care technologies and devices; (3) strengthening the nation's telehealth infrastructure through the FCC's Rural Health Care Program and other initiatives; (4) raising consumer awareness about the value proposition of broadband in the health care sector and its potential for addressing health care disparities; (5) enabling the development of broadband-enabled health technologies that are designed to be fully accessible to people with disabilities; (6) highlighting effective telehealth projects, broadband-enabled health technologies, and mHealth applications across the country and abroad—to identify lessons learned, best practices, and regulatory challenges; and (7) engaging a diverse array of traditional and non-traditional stakeholders to identify emerging issues and opportunities in the broadband health space.

To continue evaluating these and other challenges, we request that stakeholders and other interested parties provide comment, information, and/or data on the issues and subject matter described below. This Notice seeks the most current information available that is specifically relevant to the intersection of broadband, advanced technology, and health care in view of the aforementioned Task Force objectives. For convenience, the issues for comment are enumerated; and we request that parties, in their submission, identify the enumerated issue to which their written response pertains. We also encourage parties to identify any other relevant issues not covered below.

Objective I: Promote Effective Policy and Regulatory Solutions That Encourage Broadband Adoption and Promote Health IT

Broadband and advanced technologies appear increasingly critical to the effective transformation of our health care system. First, these technologies enable the efficient exchange of patient and treatment information by allowing providers to access patients' electronic health records from on-site or hosted locations. Second, in many cases it can remove geography and time as barriers to care by enabling telehealth and telemedicine applications like video consultations and remote patient monitoring. Third, broadband provides a foundation for the next generation of medical devices, as well as other health innovation and connected-care solutions. Finally, broadband-enabled health IT offers real opportunities for consumers to take charge of their own health.

To ensure that these and other benefits continue to accrue and expand, it is critical that we identify and engage in appropriate efforts to address any current and emerging issues of concern. In this regard, we note that there are some broad policy measures that, if implemented, could accelerate broadband deployment generally, and thereby provide greater access to broadband-enabled health technologies, solutions and services, especially for those consumers living in rural and underserved areas of the country. A prime example is the possible establishment of ''Gigabit Opportunity Zones.'' In September 2016, FCC Chairman Ajit Pai, as part of his Digital Empowerment Agenda for accelerating the deployment of high-speed Internet access, called on Congress to provide tax and other financial incentives for the private sector to deploy gigabit broadband services in low income neighborhoods, which he referred to as ''Gigabit Opportunity Zones.'' More recently, the Commission created the Broadband Deployment Advisory Committee (BDAC) to provide the Commission advice on, among other things, accelerating broadband deployment, identifying regulatory barriers to infrastructure investment, and making recommendations for reducing and/or removing regulatory barriers. We now seek additional and specific data regarding the pace of deployment and adoption of broadband for health and in health care. As detailed below, we also invite input on policies or initiatives that the FCC could implement to further spur deployment and adoption of broadband services, especially in critical need areas at the intersection of health and broadband (*e.g.,* the counties identified in the Connect2HealthFCC Task Force's *Priority 100* and *Rural 100* lists).

1. We request suggestions regarding ways in which the FCC, based on its authority, can further accelerate broadband adoption in the health care context and promote broadband-enabled health IT solutions, either on its own or

working in collaboration with other agencies, and, at the same time, ensure that such services and technologies are fully available and accessible to all Americans, including those living in rural and remote areas, low density populations, Tribal lands, and in underserved urban areas of our country. We also seek comment on what impediments to these efforts exist, and how the FCC can address them.

2. We request information and data on the types, impact, scale, and benefits of broadband-enabled services and technologies used for the delivery of health care. How is broadband *currently* being used to augment or transform existing health care delivery? What types of health care settings are using broadband-enabled services and technologies besides large medical hospitals? What variety of medical issues are they used for? Where are these health care settings located? What are some of the *future plans* for using broadband-enabled health services and technologies—not just by clinicians and hospitals but also by other participants in the broader health ecosystem?

3. We are also interested in learning how health technologies and services can take advantage of new technological applications and emerging communications networks. For example, what impact will the Internet of Things (IoT) have on broadband-enabled health technologies and services such as telehealth and telemedicine? To what extent will pervasive connectivity and a fully connected environment around individuals (*e.g.,* IoT) shift the point of care delivery? How might the demands on broadband networks evolve in this new environment? What, if any, changes are anticipated in existing broadband-enabled health services and technologies—operating over current mobile networks—when 5G (Fifth Generation Mobile and Wireless Networks) becomes available? To what extent might telehealth and telemedicine be impacted by the availability of 5G networks? What medical device innovations are anticipated to be developed using 5G networks?

4. What technical issues concerning the variety of broadband-enabled health care solutions and technologies are appropriate and necessary for the FCC to consider with respect to efforts to accelerate broadband adoption and promote health IT solutions? Are there issues of concern with respect to access, availability, interoperability, capacity, reliability, privacy, security, and speed? If so, please describe them. Does consideration of any of these issues vary depending on the technology platform—*e.g.,* digital subscriber line (DSL), cable, fiber, wireless, or satellite?

5. We seek to better understand health care providers' connectivity requirements. What type of connectivity (*e.g.,* wired or wireless; fixed or mobile) is necessary to support the deployment of health IT applications today and in the near future at the different types of health care delivery settings (*e.g.,* tertiary care centers versus primary care physician practices, larger physician groups, clinics, hospitals, as well as ''hospital in the home'' settings).

a. What are the minimum bandwidth and speed requirements for the different types of health IT applications available today and in the near future for clinical and non-clinical settings? We also seek comment on bandwidth constraints brought on by increased overall usage as well as the impact of data intensive medical applications. Are there future technologies or applications on the horizon that could be bandwidth intensive? If so, what are they, and to what extent could compression and other technologies provide a solution for such future technologies or applications?

b. Some evidence suggests that real-time image manipulation and video (*e.g.,* telestroke and tele-emergency applications) will stimulate demand for more and better broadband and at lower prices. Are there current issues concerning network speeds and delays for these types of services? Do mobile health applications present unique considerations in terms of coverage, reliability, and security? We seek suggestions on whether, and if so, how the Commission could address these issues.

c. To what extent do rural communities and Tribal lands have access to Internet connection speeds that are sufficient to support the effective and efficient transmission of data and video to provide telehealth, telemedicine, and other broadband health technology services?

d. What, if any, interoperability, capacity, reliability, security, and speed issues currently exist for wireless (*i.e.,* radiofrequency (RF)-based) medical devices used by patients in both clinical and non-clinical settings (*e.g.,* at home); and for healthcare providers with respect to the provision of broadband-enabled health technologies, like telehealth and telemedicine services? Are there other technical issues appropriate for the Commission to consider?

e. What impediments, if any, exist in trying to retrofit existing and future health care facilities (*e.g.,* hospitals and clinics) for broadband-enabled services and technologies, given current connectivity needs and the existence of varied spectrum environments? Do current designs take into consideration any potential interference concerns with projected wireless networks and devices that will be used in these facilities? Are there (or should there be) industry standards or best practices for ensuring that new health care facilities consider broadband in their design and account for any necessary conduits, wiring, building configuration, and materials (*e.g.,* there may be a need to consider certain materials for internal or external walls to better enable wireless broadband within a facility or to limit RF into a building) at the design and construction phase?

6. We seek to understand the full range of issues that might be affecting the development and adoption of broadband-enabled technology and services in health care. What non-technical impediments or issues currently exist in the provision of broadband-enabled health technology services? Are there any circumstances or practical considerations (*e.g.,* cost, funding, and training) that may be creating disincentives for clinicians and health care settings to offer broadband-enabled health services and technologies, such as telehealth and telemedicine? If so, please describe what they are, including the extent and nature of the Commission's authority to address them.

7. What efforts are being made at the state and local levels to address broadband health technology accessibility issues in rural and remote areas, Tribal lands, and underserved urban areas? We seek specific information, particularly from states, localities, Tribal governments, and rural and urban medical centers, about any broadband-enabled health IT programs that have been developed and implemented (or will soon be implemented) to reach these areas. How successful have those programs been? What are some of the lessons learned in developing those programs? What programs and other efforts are necessary to drive attention to those rural and underserved populations that need health technologies most? How can the Commission better facilitate the deployment of services and technologies as well as consumer adoption in those areas?

8. We seek suggestions on ways the Task Force can effectively and efficiently identify any gaps in the availability of broadband-enabled health technologies in the country. We request any information, data, or studies that

can better inform the Task Force as to where broadband-enabled health services and technologies are critically needed in the country but are insufficient or unavailable. Why do these availability gaps exist? Maps and data—including those commissioned by or for states or localities—would be particularly helpful. In August of 2016, the Task Force launched one such broadband health analytics tool—the *Mapping Broadband Health in America* platform—to allow stakeholders to more easily analyze and study the intersection between connectivity and health for every state and county in the United States. While the response to the platform—from other federal agencies, as well as private organizations and industry—has been uniformly positive, with some already using the mapping platform to improve data-driven decision-making around broadband health-related policies and initiatives, we seek additional stakeholder input. How can we further improve the analytic platform to encourage investment in broadband health networks in areas with the greatest health and connectivity needs? If we wanted to refine the tool to identify potential partnerships among health care providers or between health care providers and broadband service providers, what is the best way to achieve that goal?

9. What are the impediments to making health IT and other broadband health technology services available and ubiquitous in rural and remote areas, low population density areas, Tribal lands, and underserved urban sectors? Are there any unique challenges that persist in these areas; if so, what are they? In particular, we seek comment on any deployment, infrastructure, geographic, expertise (*e.g.,* the availability and adequacy of IT expertise), telecommunications carrier availability, cost, and any other challenges in these areas. We seek suggestions for how to address such challenges, including on any rule and/or policy changes that the Commission should consider.

Objective II: Identify Regulatory Barriers (and Incentives) to the Deployment of RF-Enabled Advanced Health Care Technologies and Devices

The Commission has a long history of addressing spectrum needs for the development of next- generation health technologies and medical devices, and of exercising flexibility, as necessary and appropriate, in revising its rules and policies to speed up their deployment. However, in recent months, stakeholders in the health sector and commercial wireless industry have raised concerns about the likely surge in demand for spectrum for wireless medical devices and broadband-enabled services—noting trends toward fully connected hospitals, widespread remote patient monitoring, and leveraging connectivity to improve health facilities' workflow and back-office functions—and have sought appropriate regulatory relief. Most recently, in August 2016, TerreStar Corporation filed a request for waiver of its substantial service requirements to enable use of its wireless licenses in the 1.4 GHz band to provide wireless medical telemetry service (WMTS) operations, citing increasing demand. Several wireless medical device manufacturers supported the waiver request and argued that there was a spectrum shortage facing WMTS licensees.

Below, we seek information and data on (i) the types of broadband-enabled health technologies and medical devices currently in the market and those that may be launched in the near future; (ii) the future spectrum and wireless infrastructure needs in the health care sector; and (iii) any concerns about the increased use and proliferation of wireless medical devices in health care settings and public spaces. Also, we welcome comment on what, if any, regulatory barriers exist (as well as incentives that could be implemented) concerning the deployment of advanced broadband-enabled health care technologies and medical devices. For purposes of this Document, we are only seeking information on ''medical devices'' that use RF wireless technology or communications functions for diagnosis, treatment, or patient monitoring.

10. We seek information on the types of broadband-enabled health technologies and medical devices that are *currently* in the market. In addition, what emerging types of broadband-enabled health technologies and medical devices are likely to be available to consumers soon? What are the *future* trends in this market area?

11. What, if any, technical issues or concerns exist for patients and other users of medical devices when such devices are used in hospital settings? Do these concerns vary depending on the type and size of the hospital setting? Are these concerns exacerbated when medical devices are operating in large or busy hospital environments (which may include a wide variety of wireless technologies, some of which may be unrelated to clinical care); if so, what are those concerns, how can they be addressed?

12. Similarly, what, if any issues or concerns exist for patients and other users of medical devices when such devices are used primarily in potentially uncontrolled, non-hospital settings (*e.g.,* in homes, aircraft, cruise ships, or other close quarter, multi-unit dwellings, etc.), where non-health related wireless technologies that also emit radio frequencies (*e.g.,* baby monitors, wireless home security systems, Wi-Fi routers, etc.) may proliferate? And to what extent might similar issues or concerns exist for emerging and future technological innovations (*e.g.,* electric automobiles, smart cars, smart homes, etc.)?

13. We seek comment, data, and any studies on the possible complexities of the future RF environment in homes, hospitals, and other public spaces related to the increasing number of medical applications and devices.

14. How are medical devices currently being tested and evaluated to ensure that consumers and patients can safely use them in both clinical and non-clinical settings, given their operation in varied spectrum environments? Are there currently any FCC rules or policies that serve as barriers to testing and deployment of advanced health care technologies and medical devices? If any, please identify which specific rules and/or policies, and explain how they have served to impede the testing and deployment of health care technologies and medical devices. How might the Commission address such concerns?

15. We also request recommendations on how the Commission could make an assessment of the spectrum and wireless infrastructure needs for the future of health care in the United States. We seek input from all relevant stakeholders, including members of the health care, wireless, and software industries who are developing wireless healthcare applications for the present and future; physicians, consumer advocates, and academicians; and relevant federal, state, and local government agencies. While we envision building upon the spectrum management and wireless infrastructure deployment policies that the FCC has successfully employed in the past to promote innovation in wireless health services, we ask commenters to identify any novel framework, including those that might include smart city initiatives or public/private partnerships, that could be useful in planning for the wireless future of our nation's health care system.

a. One of the compelling drivers of mobile technology in healthcare is the increasing availability of health apps for smartphones and tablets. There is now

an app for almost every conceivable healthcare need, ranging from drug dose calculators to fully functioning electronic medical records. We are also seeing the development of smart homes and automobiles that would enable even more sophisticated remote health monitoring. How soon will we see widespread adoption of these technologies and what implications will they have on the spectrum needs of the health care industry?

b. In developing a national spectrum plan for the health care industry, are there particular spectrum bands that the FCC should consider?

c. When it comes to increased need for spectrum-based health technologies, what challenges do small, rural, and critical access hospitals have that are different from what large hospitals face?

d. Do health care facilities, because of their different physical characteristics, require different types of small cells and wireless infrastructure than other commercial enterprises? What are the most challenging impediments to the deployment of wireless infrastructure in hospitals and health care systems? What policies should the FCC consider in order to help streamline infrastructure siting that is necessary for the deployment of wireless networks in hospitals and health care systems? What state or local government regulatory policies have helped to facilitate streamlined deployment of wireless infrastructure for health care?

e. How can new advanced spectrum sharing techniques (*e.g.,* dynamic spectrum sharing through database controlled coordination, software designed radios, or efficient spectrum use through network virtualization techniques) or secondary market mechanism (*e.g.,* spectrum leasing arrangements) be leveraged to meet the spectrum demands of cutting-edge mobile broadband-enabled health technologies and medical devices that may be operating in varied spectrum environments? Are there any issues with harmonization of spectrum for medical uses across international borders to ensure that consumers can effectively and safely use medical and other devices across borders?

f. What are some of the recent and emerging trends in health care delivery (in rural and urban areas) that are implicating spectrum use and needs? Are these trends creating a greater need for spectrum wireless services, particularly in rural areas? Are these trends resulting in increased use of remote patient monitoring solutions?

16. Do any regulatory barriers exist concerning the deployment of advanced broadband-enabled health care technologies and medical devices? We also welcome suggestions on any regulatory incentives (that are within the FCC's authority) that could serve to foster continued investment in and further deployment of next-generation broadband-enabled health technologies and medical devices?

Objective III: Strengthen the Nation's Telehealth Infrastructure Through the FCC's Rural Health Care Program and Other Initiatives

Broadband deployment is one of the FCC's top priorities, particularly in rural America. Based on current evidence, broadband can be a game-changer particularly in rural areas—where consumers often have to drive long distances to access critical or specialty care; and where isolated clinics and health centers can save lives and promote community health by using advanced communications technologies to connect with medical expertise not otherwise available, as well as monitor patients who live many miles away from a health care facility.

The FCC's Rural Health Care (RHC) Program has helped expand broadband services for eligible health care providers (HCPs) in rural areas. Currently, the RHC Program is comprised of three programs: The Healthcare Connect Fund (HCF), the Telecommunications Program, and the Pilot Program. With respect to the Pilot Program, while no new funding is available, some projects continue to accept new HCP sites. As funding for the Pilot Program projects ends, Pilot Program projects are expected to apply for additional support, if needed, under the Healthcare Connect Fund. The FCC established the Healthcare Connect Fund to expand health care provider access to broadband, especially in rural areas, and encourage the creation of state and regional broadband health care networks. Under the Healthcare Connect Fund, eligible rural HCPs, and those non-rural HCPs that are members of a consortium that has a majority of rural HCP sites, can receive a 65 percent discount from the fund on all eligible expenses. HCPs are required to contribute the remaining 35 percent to participate in the program. HCPs can use the Healthcare Connect Fund to purchase eligible services and equipment, as well as construct their own broadband infrastructure where it is shown to be the most cost effective option. The cap on total funding for the RHC Program altogether, which includes the Telecommunications Program and the Healthcare Connect Fund, is $400 million annually.

The Commission's RHC Program has made the benefits of broadband-enabled health services, such as telehealth and telemedicine, more available to consumers living in rural and remote areas. Such broadband-enabled services have provided patients in rural areas with access to critically needed medical specialists in a variety of practice areas. The availability of telehealth and telemedicine programs also has been found to mitigate significant challenges associated with disparities in access to care and healthcare workforce shortages. The RHC Program also has been found to save health care providers money as well. The Commission continues to evaluate the Healthcare Connect Fund (HCF) in terms of the programmatic goals of (1) increasing access to broadband for HCPs, particularly those serving rural areas; (2) fostering the development and deployment of broadband health care networks; and (3) maximizing the cost-effectiveness of the program.

17. We seek comment and suggestions on how the FCC can further promote and help enable the adoption and accessibility of broadband-enabled health technologies, like telehealth and telemedicine, in rural and other underserved areas. Are there other initiatives or actions beyond the RHC Program that the agency, or the Task Force on behalf of the agency, could pursue in order to promote and help enable the adoption and availability of broadband-enabled health technologies in rural and underserved areas of the country?

18. Is the regulatory framework for the Rural Health Care program keeping pace with how broadband-enabled health care is being delivered in rural and underserved areas? If not, please explain in detail, describing any emerging challenges, gaps or opportunities for using broadband to better meet the health and health care needs of rural consumers.

19. We seek current information and data, if any, that can be used to measure the impact that the various RHC programs have had on certain populations and sectors—*i.e.,* those living in rural and underserved areas, low density populations, and Tribal lands; older Americans; persons with disabilities; military veterans; and the economically disadvantaged in rural and urban communities—all of which have traditionally faced significant health and health care challenges.

20. We also are interested in hearing recent success stories about innovative health care services that were created or that became available as a result of the RHC Program, and how such services

have helped consumers in rural and remote areas. We are particularly interested in receiving data and information about health outcomes, return on investment, and the ability to reach such underserved population groups. First-person accounts are welcomed.

21. We seek information, data, and studies that identify specific rural areas and underserved regions of the country that need funding assistance for the purchase of high-capacity broadband connectivity, connections, and any other services or equipment authorized under the RHC Program rules. We seek detailed information and data as to whether eligible health care providers in these areas and regions that require funding assistance have participated in the RHC Program, and if not, why not. We also seek suggestions on how the Commission can encourage or facilitate their participation. Are there specific challenges of which the Commission should be aware?

22. The Task Force is interested in identifying all currently available public (federal, state, or local) and private (*e.g.,* non-profit or philanthropic organizations) funding sources for the provision of broadband-enabled health technologies and services (*e.g.,* telehealth and telemedicine) in rural regions, Tribal lands, and in other underserved areas (including underserved urban areas), as well as for vulnerable populations. Please provide information about those funding sources, as well as their Web site address, if any.

23. We seek any other comment, information, and data concerning the RHC Program as well as the general needs of rural consumers for broadband-enabled health solutions that would be helpful to the Task Force, given its charge and objectives.

Objective IV: Raise Consumer Awareness About the Value Proposition of Broadband in the Health Care Sector and its Potential for Addressing Health Care Disparities

It is critically important that consumers fully understand the practical and personal benefits of broadband in health care and in facilitating greater care coordination, proactive engagement in disease prevention, and self-management. Placing more care decisions in the hands of consumers and personalizing that experience appears to be a major theme in health applications and product development today. We also recognize that as consumers fully realize the practical health benefits of broadband, consumer demand for broadband-enabled health services and technologies will serve to further accelerate broadband deployment and adoption altogether—a national priority.

24. We seek suggestions on how the Commission can effectively increase consumer awareness about the value proposition of broadband in the health care sector? Are there any practical efforts that the Commission can undertake to accelerate consumer adoption of broadband, and in particular broadband-enabled health services and technologies, especially among underserved populations? How might the Commission ensure that certain groups—*e.g.,* rural consumers, those living on Tribal lands, older Americans, people with disabilities, military veterans, non-English speakers, and the economically disadvantaged—are fully aware of the availability and benefits of broadband-enabled health services and technologies? Are there any states, cities, and organizations engaged in similar efforts that could lead to potential partnerships?

25. We also seek comment on any concerns that may discourage consumers, health care providers, and others from adopting broadband-enabled health services and other advanced health technologies, including telehealth and telemedicine services and emerging medical devices. To what extent do safety, security, reliability, and privacy concerns influence adoption of broadband-enabled health services and other advanced technologies? To what extent do costs, socioeconomic status, and digital literacy issues impact adoption?

26. We request information on any studies, pilots, research, or other data that quantifies the benefits of broadband-enabled health technologies in improving patient outcomes and in reducing costs. What kind of return on investment have pilot and demonstration projects experienced?

27. We are interested in learning how broadband can enable healthcare-related support systems to connect patients to the people, services and information they need to get well and stay healthy. In this regard, physicians inform us that there is growing recognition that the need for social services and supports (*e.g.,* nutritionists, dieticians, pharmacists, family caregivers, fitness centers, and other health care supports or supporters outside the traditional hospital setting) significantly impact the ability of some consumers to become healthy and stay well, and that the availability of broadband is increasingly essential to bridging the various services and supports. We seek comment and suggestions on how the Commission can support the development and availability of these new broadband-enabled services and supports (outside the RHC Program) especially on Tribal lands and in rural, remote, and other underserved areas?

28. We seek information and any studies about how broadband-enabled services and technologies have been, and could be used, to address health and health care disparity issues, and the impact (and successes) such services and technologies have had in addressing such issues.

29. Are there any practical issues (*e.g.,* the lack of a home computer) that may be impeding consumer awareness and adoption of broadband-enabled health technologies? What efforts can be undertaken to help alleviate some of these issues?

Objective IV: Enable the Development of Broadband-Enabled Health Technologies That are Designed to be Fully Accessible to People With Disabilities

The availability and accessibility of broadband-enabled health technologies designed to serve the needs of Americans with disabilities is critically important. One recent study estimates that, in 2013, the overall percentage of people with a disability in the U.S., among the civilian noninstitutionalized population, was 12.1 percent or approximately 37 million people. Other studies suggest that the number is higher than 50 million, and that it is predicted to continue to increase. Given these statistics, it is imperative that we do what we can, within our statutory authority, to promote the goal of making broadband-enabled health technologies and cutting-edge health and medical devices and applications available, accessible, and usable by people with disabilities.

Technology has historically played an important role in the disability community. Many people with disabilities use communications technology, devices, or services in their daily lives, and broadband is becoming an essential data transmission platform that enables a wide range of services and tools. Ensuring that people with disabilities are able to access electronic health records, engage in video consultation with their physicians, fully utilize the latest health apps, and benefit from advances in wearable health technology, for example, are essential to the ongoing health care transformation. Consistent with its charge, the Task Force will consider the extent to which broadband-enabled services and technologies used for the provision of health *and* care are

available, accessible, and usable by all Americans, including those with disabilities. We therefore seek any data, information, and comment that will assist the Commission in better understanding how it may assist in achieving these important goals.

30. How are broadband-enabled health technologies and medical devices currently being used by people with disabilities? To what extent can these technologies and devices address the health care needs of people with disabilities in the future? Provide specific examples of the existing barriers, if any, that these technologies and devices pose for people with disabilities.

31. We seek comment on whether the design and development of broadband-enabled health services and technologies, as well as cutting-edge health and medical devices and applications, are accessible to, and usable by, people with disabilities. Are there practical concerns or other issues that are inhibiting or limiting the use and availability of broadband-enabled health services and technologies for people with disabilities? How are hospitals and clinicians currently addressing, if at all, any of these issues? An increasing number of health care services provide patient portals for patients to access medical records and communicate with physicians and specialists. What measures are taken to ensure that these mechanisms are fully accessible to users with disabilities (*e.g.,* accessible via screen readers used by individuals who are blind)?

32. To what extent are clinicians aware of video relay service (VRS) and using it when remotely consulting with American Sign Language (ASL) users on a telephone call? Is there a need for VRS providers to have ASL interpreters with a knowledge of (and ability to translate) specialized health or medical vocabulary? Should a VRS call that involves consultations between a deaf or hard of hearing person and a doctor be given priority over other calls waiting in a queue, especially when there is a possible medical emergency? We also seek comment as to whether our telecommunications relay service (TRS) rules are currently optimized to encourage medical consults via telemedicine?

33. We seek suggestions as to how the Commission can effectively raise awareness among people with disabilities about the value proposition of broadband in health? How can the Commission help to enable the adoption and accessibility of such services and technologies among people with disabilities, especially given our authority?

Objective VI: Highlight Effective Telehealth Projects, Broadband-Enabled Health Technologies, and mHealth Applications Across the Country and Abroad—To Identify Lessons Learned, Best Practices, and Regulatory Challenges

Related to the objective of increasing consumer awareness about the practical health-related benefits of broadband is the need to inform the public—especially those in rural and underserved regions—about the availability and successes of the many broadband-enabled telehealth and telemedicine centers and projects across the country and abroad, as well as existing and emerging mHealth applications, and to identify lessons learned and best practices.

34. We seek current information and data on the effectiveness of broadband-enabled telehealth and telemedicine services, including any recent research on these services. How are patients responding to these services? We are particularly interested in receiving comments directly from consumers about their experience with these and other broadband-enabled services and technologies.

35. We also seek comment on specific challenges faced by states, localities, and Tribal governments, as well as communities abroad, in deploying effective broadband-enabled telehealth and telemedicine projects.

36. We seek comment on how the public can be better informed about the availability of broadband-enabled health services and technologies and mHealth applications. What have states, localities, other federal agencies, Tribal governments, and hospitals and clinics done to inform the public about the availability of these options? How effective have these projects been in promoting greater broadband utilization?

37. We seek submissions of any case studies, research and video/audio summaries concerning recently launched applications/programs that are on the cutting edge of telehealth, telemedicine, mHealth, and other broadband-enabled health technologies and services.

38. We seek comment on the extent to which the United States is not taking full advantage of the opportunities that broadband-enabled health technology provides. For countries that have been the most successful in making broadband-enabled health services and technology more widely available, especially in rural and underserved areas, we seek information on the approaches that such countries took (including lessons learned) in achieving success in broadband health adoption.

Objective VII: Engage a Diverse Array of Traditional and Non-Traditional Stakeholders To Identify Emerging Issues and Opportunities in the Broadband Health Space

Published reports indicate that the ''the health IT industry is gaining a reputation as an emerging sweet spot for technology investors.'' We want to be sure that Commission policies do not present obstacles to continued innovation and investment in broadband-enabled health technologies, including medical devices that rely on communications technology. We observe that there is a growing desire for such technologies—including those that are wearable or otherwise track and monitor personal health—and that this emerging health market is estimated to be worth billions. There are also countless smartphone apps that track health-related issues. By some estimates, there are over 100,000 digital health apps offered in the three major app stores. In addition, recent advances in broadband-enabled sensor technology offer the potential for the emergence of more convenient and ultimately less costly and less invasive health care solutions. For example, we may soon see the widespread use of smart clothing (or smart ''tattoo'' applications) that use skin-based sensors to measure things like heart rate, respiration, and blood pressure. Robotics, virtual reality, and other consumer facing health technologies also offer the potential to help older Americans live more independently. Some technology companies are even experimenting with combining web search with online health consultations for a one-stop offering. To help inform the Commission in its related and other efforts in this area, we seek comment and information on these and other emerging health technologies, applications, services, and connected medical devices.

39. We seek comment on any emerging issues of concern (that have not been identified in this Document) that potentially impact efforts to accelerate the availability of broadband-enabled health technologies and services, as well as medical devices that rely on communications technology.

40. While the United States has made great strides in recent years, many advances in digital health technologies are still not broadly available, widely utilized, or well-tailored to meet the

needs of all Americans. We seek comment on these concerns.

41. What are the emerging opportunities for investors, innovators, and entrepreneurs in the broadband health space and in the development of the next generation of connected health technologies and converged medical devices? We seek suggestions on any efforts that the Commission might undertake to support innovation and entrepreneurship in these areas. Are there emerging or non-traditional stakeholders that should be part of the Commission's efforts? If so, please identify them and their respective roles in or contributions to the broadband health space.

42. We seek comment on how to promote small and diverse investors, innovators, and entrepreneurs in the broadband health sector in order to better ensure that the benefits of broadband-health technologies and services are available to all Americans.

43. We seek to engage all potential stakeholders in this national broadband health effort. Commenters should identify any additional stakeholders that are not specifically referenced in this Document. We also encourage parties to identify any other relevant issues (not covered in this Notice) for the Task Force, given its charge and objectives.

Administrative Matters. Because this Document does not itself initiate a ''proceeding,'' responses to the Document are not ''presentations'' subject to the prohibitions in restricted proceedings and the disclosure requirements in permit-but-disclose proceedings. Nonetheless, parties discussing or providing information to the Task Force or any other members of the Commission regarding the issues raised in this Document are strongly encouraged to file a memorandum in the docket, summarizing their discussion and/or information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–09309 Filed 5–9–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket No. 10–90, WT Docket No. 10–208; Report No. 3077]

Petitions for Reconsideration and/or Clarification of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration and/or clarification.

SUMMARY: Petitions for Reconsideration and/or Clarification (Petitions) have been filed in the Commission's rulemaking proceeding by Caressa D. Bennet, on behalf of Rural Wireless Association, Inc.; Krista L. Witanowski, on behalf of CTIA; Brian Gelfand, on behalf of Buffalo-Lake Erie Wireless Systems, L.L.C. (Blue Wireless); Robert A. Silverman, on behalf of Panhandle Telephone Cooperative, Inc. and Pine Belt Cellular, Inc.; John Prendergast, on behalf of the Blooston Rural Carriers; David A. LaFuria, on behalf of Rural Wireless Carriers; and Cathleen A. Massey, on behalf of T-Mobile USA, Inc.

DATES: Oppositions to the Petitions must be filed on or before May 16, 2017. Replies to an opposition must be filed on or before May 26, 2017.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark Montano, Wireless Telecommunications Bureau, (202) 418–0691, email: *mark.montano@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 3077, released May 1, 2017. The full texts of the Petitions are available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 or may be accessed online via the Commission's Electronic Comment Filing System at *http://apps.fcc.gov/ecfs/*. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5.U.S.C. because no rules are being adopted by the Commission.

Subject: Connect America Fund; Universal Service Reform—Mobility Fund, Report and Order, FCC 17–11, published at 82 FR 15422, March 28, 2017, in WC Docket No. 10–90 and WT Docket No. 10–208. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 7.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–09462 Filed 5–9–17; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 82, No. 89

Wednesday, May 10, 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

Office of the Secretary

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: National Appeals Division, U.S. Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the U.S. Department of Agriculture, National Appeals Division's request for an extension to a currently approved information collection for Customer Service Survey.

DATES: Comments on this notice must be received by July 10, 2017 to be assured of consideration.

ADDRESSES: The National Appeals Division invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments.
- Go to *http://www.regulations.gov*. Follow the on-line instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. Angela Parham, U.S. Department of Agriculture, National Appeals Division, 3101 Park Center Drive, Suite 1100, Alexandria, Virginia 22302–1500, 703.305.2588.

SUPPLEMENTARY INFORMATION:

Title: National Appeals Division Customer Service Survey.

OMB Number: 0503–0007.

Expiration Date of Approval: September 2017.

Type of Request: Extension of a currently approved information collection.

Abstract: Executive Order 12862, requires Federal Agencies to identify the customers who are or should be served by the Agency and survey those customers to determine the kind and quality of services they want and level of satisfaction with existing services. Therefore, NAD proposes to extend its currently approved information collection survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .17 hours per response.

Respondents: Appellants, producers, and other USDA agencies.

Estimated Number of Respondents: 1600.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 272.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Dr. Angela Parham, U.S. Department of Agriculture, National Appeals Division, 3101 Park Center Drive, Suite 1100, Alexandria, Virginia 22301–1500. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Steven C. Silverman,

Director, National Appeals Division.

[FR Doc. 2017–09406 Filed 5–9–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0037]

Notice of Request for Extension of Approval of an Information Collection; Environmental Monitoring

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with environmental monitoring.

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

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0037*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0037, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0037* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on environmental monitoring, contact Dr. Robert Baca, Assistant Director, Permitting and Compliance Coordination, Compliance and Environmental Coordination Branch, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737; (301) 851–2292. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy,

APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Environmental Monitoring.

OMB Control Number: 0579–0117.

Type of Request: Extension of approval of an information collection.

Abstract: The mission of the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is to provide leadership in ensuring the health and care of animals and plants, to improve agricultural productivity and competitiveness, and to contribute to the national economy and the public health.

APHIS is committed to accomplishing its mission in a manner that promotes and protects the integrity of the environment. This includes APHIS' compliance with all applicable environmental statutes and regulations, including the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), USDA regulations implementing NEPA (7 CFR part 1b), and APHIS' NEPA Implementing Procedures (7 CFR part 372). APHIS engages in environmental monitoring for certain activities that we conduct to control or eradicate certain pests and diseases. We monitor those activities that have the greatest potential for harm to the human environment to ensure that the mitigation measures developed to avoid that harm are enforced and effective. In many cases, monitoring is required where APHIS programs are conducted close to habitats of endangered and threatened species. This monitoring is developed in coordination with the U.S. Department of the Interior's Fish and Wildlife Service, in compliance with the Endangered Species Act (50 U.S.C. 17.11 and 17.12).

APHIS field personnel and State cooperators jointly use an Environmental Monitoring Form to collect information concerning the effects of pesticide use in these sensitive areas. The goal of environmental monitoring is to track the potential impact that APHIS activities may have on the environment and to use this knowledge in making any necessary adjustments in future program actions.

We are asking OMB to approve our use of this information collection activity for an additional 3 years.

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

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

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

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

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

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.50 hours per response.

Respondents: Growers, appliers of pesticides, State department of agriculture personnel.

Estimated annual number of respondents: 110.

Estimated annual number of responses per respondent: 20.

Estimated annual number of responses: 2,200.

Estimated total annual burden on respondents: 1,100 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

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

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–09467 Filed 5–9–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0015]

Bayer CropScience LP.; Availability of Draft Environmental Assessment, Plant Pest Risk Similarity Assessment, Preliminary Finding of No Significant Impact, and Preliminary Decision for an Extension of a Determination of Nonregulated Status of Canola Genetically Engineered for Male Sterility and Glufosinate-Ammonium Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: We are extending the comment period for our notice advising the public that the Animal and Plant Health Inspection Service has reached a preliminary decision to extend our determination of nonregulated status of InVigor® MS8 canola (hereinafter MS8 canola) to Bayer's canola event MS11 in response to a request from Bayer CropScience LP. MS11 canola has been genetically engineered for male sterility and resistance to the herbicide glufosinate-ammonium using the same mechanism of action as MS8 canola. This action will allow interested persons additional time to prepare and submit comments on our draft environmental assessment, preliminary regulatory determination, preliminary finding of no significant impact, and plant pest risk similarity assessment for the proposed determination of nonregulated status.

DATES: The comment period for the notice published on April 12, 2017 (82 FR 17625) is extended. We will consider all comments that we receive on or before May 30, 2017.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0015.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The Bayer CropScience LP. extension request, our draft environmental assessment, plant pest risk similarity assessment, our preliminary finding of no significant impact, our preliminary determination, and any comments we receive on this docket may be viewed at

http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0015 or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Supporting documents and any comments we received regarding our determination of nonregulated status of the antecedent organism, MS8 canola, may be inspected in our reading room. Supporting documents may also be found on the APHIS Web site for MS11 canola (the organism under evaluation) under APHIS Petition Number 16–235–01p.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Document Control Officer/Team Leader, Policy Coordination Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: On April 12, 2017, we published in the **Federal Register** (82 FR 17625–17626, Docket No. APHIS–2017–0015) a notice advising the public that the Animal and Plant Health Inspection Service has reached a preliminary decision to extend our determination of nonregulated status of InVigor® MS8 canola (hereinafter MS8 canola) to Bayer's canola event MS11 in response to a request from Bayer CropScience LP. MS11 canola has been genetically engineered for male sterility and resistance to the herbicide glufosinate-ammonium using the same mechanism of action as MS8 canola. The notice also made available for public comment our draft environmental assessment, preliminary regulatory determination, preliminary finding of no significant impact, and plant pest risk similarity assessment for the proposed determination of nonregulated status.

Comments on the notice were required to be received on or before May 12, 2017. We are extending the comment period on Docket No. APHIS–2017–0015 for an additional 15 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 5th day of May 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–09499 Filed 5–9–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF407

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice; public hearing via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public hearing via webinar to solicit public comments on Draft Reef Fish Amendment 47—Modify Vermilion Snapper ACLs and MSY Proxies.

DATES: The public hearing will take place via webinar on Wednesday, May 24, 2017; starting at 6 p.m. EDT and will conclude no later than 9 p.m. Written public comments must be received on or before 5 p.m. EDT on Tuesday, May 16, 2017.

ADDRESSES: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630; *www.gulfcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630, *steven.atran@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: Based on the results of a 2016 vermilion snapper stock assessment, the Council's Scientific and Statistical Committee (SSC) concluded that the vermilion snapper stock is neither overfished nor undergoing overfishing. The SSC provided recommendations for the overfishing limit (OFL) during 2017–21 based on a proxy for maximum sustainable yield (MSY) of 30% SPR, and recommended acceptable biological catch (ABC) during 2017–2021 based on fishing at a fishing mortality rate that was 75% of the OFL fishing mortality rate. The Council accepted 30% SPR as the preferred MSY proxy, but also asked for analysis of the OFL and ABC yields at 26% SPR, which is a slightly less conservative MSY proxy, resulting in higher yields but also a smaller spawning stock biomass.

The Council needs to take two actions in this amendment. Action 1 is to adopt an MSY proxy. The alternatives are: (1) To not adopt a proxy (no action), (2) adopt the proxy of 30% SPR (preferred alternative), or (3) adopt the proxy of 26% SPR. Action 2 is to set annual catch limits (ACLs) for 2017–21. The alternatives are: (1) To keep the current 3.42 million pound whole weight ACL that was implemented in 2012 using a data-poor method, (2) set ACL equal to the annual estimate of ABC for each year 2017–21 (which would result in a declining annual yield) with the 2021 ACL remaining in place for subsequent years, (3) set ACL equal to a constant catch corresponding to the average ABC during 2017–21 (preferred alternative), or (4) set ACL equal to the equilibrium ABC, which is the catch level at which no further declines are projected under current biological conditions. The specific ACL yields for Alternatives 2, 3, and 4 depend upon the selection of MSY proxy in Acton 1.

Staff and a Council member will be available to answer any questions and the public will have the opportunity to provide testimony on the amendment and other related testimony.

The schedule is as follows:

Wednesday, May 24, 2017, Webinar—6 p.m. EDT at: *https://attendee.gotowebinar.com/register/5395690967655721217.*

After registering, you will receive a confirmation email containing information about joining the webinar.

Public documents may be obtained by contacting the Gulf of Mexico Fishery Management Council at (813) 348–1630 or on their Web site at *www.gulfcouncil.org.*

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

Dated: May 4, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–09438 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF406

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice; public hearing via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public hearing via webinar to solicit public comments on Draft Reef Fish Amendment 44—Minimum Stock Size Threshold for Reef Fish Stocks.

DATES: The public hearing will take place via webinar on Tuesday, May 23, 2017, starting at 6 p.m. EDT and will conclude no later than 9 p.m. Written public comments must be received on or before 5 p.m. EDT on Tuesday, May 16, 2017.

ADDRESSES: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630, *www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; *steven.atran@gulfcouncil.org*.

SUPPLEMENTARY INFORMATION: Minimum stock size threshold (MSST) is the stock biomass level below which a stock is declared to be overfished and in need of a rebuilding plan. It is set at some level below the biomass level corresponding to maximum sustainable yield (Bmsy) in order to allow natural fluctuations around the Bmsy level without spurious overfished declarations resulting. There are 7 stocks in the Reef Fish Fishery Management Plan that have current or proposed MSST definitions (gag, red grouper, red snapper, vermilion snapper, gray triggerfish, greater amberjack, and hogfish). For most of these stocks, MSST is set using the formula: (1 − M) * Bmsy, where M is the natural mortality rate and Bmsy is the stock biomass corresponding to MSY or the MSY proxy. For stocks with a low natural mortality rate, this results in an MSST that is close to Bmsy. In some cases this MSST may be so close the Bmsy that it is not significantly different given the uncertainties in the data, and may lead to spurious overfished declarations due to natural fluctuations. For this reason, the Council is considering alternatives that would broaden the difference between Bmsy and MSST for some or all of the 7 reef fish stocks.

Staff and a Council member will be available to answer any questions and the public will have the opportunity to provide testimony on the amendment and other related testimony.

The schedule is as follows:

Tuesday, May 23, 2017, Webinar—6 p.m. EDT at: *https://attendee.gotowebinar.com/register/369981646765939713*.

After registering, you will receive a confirmation email containing information about joining the webinar.

Public documents may be obtained by contacting the Gulf of Mexico Fishery Management Council at (813) 348–1630 or on their Web site at *www.gulfcouncil.org*.

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

Dated: May 4, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–09437 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF402

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Monkfish Committee on Wednesday, May 24, 2017, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, May 24, 2017 at 10 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton Philadelphia Airport, 4101A Island Avenue, Philadelphia, PA 19153; telephone: (215) 492–0400.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Monkfish Committee will discuss the potential continuation of Amendment 6 to implement catch shares in the monkfish fishery. They will also discuss research priorities for the monkfish RSA program. Other business will be discussed as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 4, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–09434 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF401

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Monkfish Advisory Panel on Tuesday, May 23, 2017, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, May 23, 2017 at 10 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton Philadelphia Airport, 4101A Island Avenue, Philadelphia, PA 19153; telephone: (215) 492–0400

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Monkfish Advisory Panel will discuss the potential continuation of Amendment 6 to implement catch shares in the monkfish fishery. They will also discuss research priorities for the monkfish RSA program. Other business will be discussed as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 4, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–09433 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF340

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Mukilteo Multimodal Construction Project in Washington State

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

ACTION: Proposed incidental harassment authorization (IHA); request for comments.

SUMMARY: NMFS has received a request from Washington State Department of Transportation (WSDOT) for authorization to take marine mammals incidental to Mukilteo Multimodal Construction Project in Washington State. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities.

DATES: Comments and information must be received no later than June 9, 2017.

ADDRESSES: Comments 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.guan@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.htm* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Shane Guan, 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.* 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

Issuance of an MMPA 101(a)(5)(D) authorization requires compliance with the National Environmental Policy Act.

NMFS preliminary determined the issuance of the proposed IHA is consistent with categories of activities identified in CE B4 (issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for which no serious injury or mortality is anticipated) of the Companion Manual for NAO 216–6A and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude this categorical exclusion.

We will review all comments submitted in response to this notice prior to making a final decision as to whether application of this CE is appropriate in this circumstance.

Summary of Request

NMFS received a request from WSDOT for an IHA to take marine mammals incidental to Mukilteo Multimodal Project in Mukilteo, Washington. WSDOT's request was for harassment only and NMFS concurs that serious injury or mortality is not expected to result from this activity. Therefore, an IHA is appropriate.

On April 7, 2016, WSDOT submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of marine mammal species incidental to construction associated with the Mukilteo Multimodal Project in Mukilteo, Washington, between August 1, 2017, and July 31, 2018. WSDOT subsequently updated its project scope and submitted a revised IHA application on April 10, 2017. NMFS determined the IHA application was complete on April 14, 2017. NMFS is proposing to authorize the take by Level A and Level B harassment of the following marine mammal species: Harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), northern elephant seal (*Mirounga angustirostris*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*P. dalli*).

Description of Proposed Activity

Overview

The purpose of the Mukilteo Multimodal Project is to provide safe, reliable, and effective service and connection for general-purpose transportation, transit, high occupancy vehicles (HOV), pedestrians, and bicyclists traveling between Island County and the Seattle/Everett metropolitan area and beyond by constructing a new ferry terminal. The current Mukilteo Ferry Terminal has not had significant improvements for almost 30 years and needs key repairs. The existing facility is deficient in a number of aspects, such as safety, multimodal connectivity, capacity, and the ability to support the goals of local and regional long-range transportation and comprehensive plans. The project is intended to:

- Reduce conflicts, congestion, and safety concerns for pedestrians, bicyclists, and motorists by improving local traffic and safety at the terminal and the surrounding area that serves these transportation needs.
- Provide a terminal and supporting facilities with the infrastructure and operating characteristics needed to improve the safety, security, quality, reliability, efficiency, and effectiveness of multimodal transportation.
- Accommodate future demand projected for transit, HOV, pedestrian, bicycle, and general-purpose traffic.

The proposed Mukilteo Multimodal Project would involve in-water impact and vibratory pile driving and vibratory pile removal. Details of the proposed construction project are provided below.

Dates and Duration

Due to NMFS and the U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect ESA-listed salmonids, planned WSDOT in-water construction is limited each year to July 16 through February 15. For this project, in-water construction is planned to take place between August 1, 2017 and February 15, 2018. The total worst-case time for pile installation and removal is 175 days (Table 1).

Specified Geographic Region

The Mukilteo Ferry Terminal is located in the City of Mukilteo, Snohomish County, Washington. The terminal is located in Township 28 North, Range 4 East, Section 3, in Possession Sound. The new terminal will be approximately 1,700 ft east of the existing terminal in Township 28N, Range 4E, Section 33 (Figure 1–2 of the IHA application). Land use in the Mukilteo area is a mix of residential, commercial, industrial, and open space and/or undeveloped lands.

Detailed Description of In-Water Pile Driving Associated With Mukilteo Multimodal Project

The proposed project has two elements involving noise production that may affect marine mammals: Vibratory hammer driving and removal, and impact hammer driving.

(1) Vibratory Hammer Driving and Removal

Vibratory hammers are commonly used in steel pile driving where sediments allow, and involve the same vibratory hammer used in pile removal. The pile is placed into position using a choker and crane, and then vibrated between 1,200 and 2,400 vibrations per minute. The vibrations liquefy the sediment surrounding the pile allowing it to penetrate to the required seating depth, or to be removed. The type of vibratory hammer that will be used for the project will likely be an APE 400 King Kong (or equivalent) with a drive force of 361 tons.

(2) Impact Hammer Installation

Impact hammers are used to install plastic/steel core, wood, concrete, or steel piles. An impact hammer is a steel device that works like a piston. Impact hammers are usually large, though small impact hammers are used to install small diameter plastic/steel core piles.

Impact hammers have guides (called a lead) that hold the hammer in alignment with the pile while a heavy piston moves up and down, striking the top of the pile, and drives it into the substrate from the downward force of the hammer on the top of the pile.

To drive the pile, the pile is first moved into position and set in the proper location using a choker cable or vibratory hammer. Once the pile is set in place, pile installation with an impact hammer can take less than 15 minutes under good conditions, to over an hour under poor conditions (such as glacial till and bedrock, or exceptionally loose material in which the pile repeatedly moves out of position).

Impact hammer is also used for ''proofing'' after pile is driven using a vibratory hammer to set the pile firmly.

Details of pile driving activities are provided below and are summarized in Table 1.

- Vibratory driving of 24-inch temporary steel pile and steel piles for a public fishing pier. Installation of each pile will take approximately 60 minutes, 3 piles installed per day, with 117 piles installed over 39 days.
- Vibratory removal of 69 temporary 24-inch diameter steel piles. This will take approximately 15 minutes per pile, with 3 piles removed per day over 23 days.
- Vibratory driving of 40 30-inch steel piles. This will take approximately 60 minutes per pile, with 3 piles installed per day over 14 days.
- Vibratory removal of 2 30-inch test steel piles. This will take approximately 15 minutes per pile, with both piles removed in 1 day.
- Vibratory removal of 7 30-inch inner dolphin steel piles. This will take approximately 15 minutes per pile, with all 7 piles removed in 1 day.
- Vibratory driving of 6 36-inch steel piles. This will take approximately 60 minutes per pile, with 3 piles installed per day over 2 days.
- Vibratory driving of 2 78-inch diameter drilled steel shafts. This will take approximately 60 minutes to install in one day.
- Vibratory driving of a 120-inch diameter drilled steel shaft. This will take approximately 60 minutes to install in one day.
- Vibratory driving of 139 steel H-piles. This will take approximately 30 minutes per pile, with 10 piles installed per day over 14 days.

• Vibratory driving of 90 temporary steel sheet piles. This will take approximately 30 minutes per pile, with 3 sheet piles installed per day over 30 days.

• Vibratory removal of 90 temporary steel sheet piles. This will take approximately 15 minutes per pile, with 6 piles removed per day over 15 days.

• Impact driving (proofing; 300 strikes per pile) of 68 temporary 24-inch diameter steel piles. This will take approximately 15 minutes per pile, with 3 piles installed per day over 23 days.

• Impact driving (proofing; 300 strikes per pile) of 5 30-inch diameter steel piles. This will take approximately 15 minutes per pile, with all 5 piles installed in 1 day.

• Impact driving with 3000 strikes per pile of 25 30-inch diameter steel piles. This will take approximately 15 minutes per pile, with 3 piles installed per day over 9 days.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING DURATIONS

Method	Pile type	Pile size (inch)	Pile number	Duration (min./sec.) per pile (vib.) or strikes per pile (impact)	Duration (days)
Vibratory driving	Steel	24	117	60/3600	39
Vibratory removal	Steel	24	69	15/900	23
Vibratory driving	Steel	30	40	60/3600	14
Vibratory removal	Steel	30	2	30/1800	1
Vibratory removal	Steel	30	7	15/1800	1
Vibratory driving	Steel	36	6	60/3600	2
Vibratory driving	Steel shaft	78	2	60/3600	2
Vibratory driving	Steel shaft	120	1	60/3600	1
Vibratory driving	Steel H-pile	12	139	30/1800	14
Vibratory driving	Steel sheet		90	30/1800	30
Vibratory removal	Steel sheet		90	15/900	15
Impact proofing	Steel	24	68	300	23
Impact driving	Steel	30	25	3000	9
Impact proofing	Steel	30	5	300	1
Total			661		175

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 Specified Activities

We have reviewed the applicants' 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 3 and 4 of the applications, as well as to NMFS's Stock Assessment Reports (SAR; *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/*), or in the U.S. Navy's Marine Resource Assessments (MRA) for relevant operating areas. The MRAs are available online at: *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html.* Table 2 lists all species with expected potential for occurrence in Mukilteo project area 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 WSDOT's Mukilteo Multimodal project 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.

Nine species (with 10 managed stocks) are considered to have the potential to co-occur with the proposed construction activities. Extralimital species or stocks unlikely to co-occur with the Mukilteo project include bottlenose dolphin, long-beaked common dolphin, Risso's dolphin, Bryde's whale, and minke whale. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2015 SARs (Carretta et al. 2016) and draft 2016 SARs (available online at: *www.nmfs.noaa.gov/pr/sars/draft.htm*).

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	N	20,990	624	132
Family Balaenopteridae (rorquals)						
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington.	Y	1,918	11.0	6.5
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Killer whale	*Orcinus orca*	Eastern North Pacific Southern Resident.	Y	78	0	0
		West coast transient	N	243	2.4	0
Family Phocoenidae (porpoises)						
Harbor porpoise	*Phocoena phocoena*	Washington inland waters.	N	11,233	66	7.2
Dall's porpoise	*P. dalli*	California/Oregon/Washington.	N	25,750	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	U.S.	N	296,750	9,200	389
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	N	71,562	2,498	108
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina*	Washington northern inland waters.	N	[4] 11,036	1,641	43
Elephant seal	*Mirounga angustirostris*	California breeding	N	179,000	2,882	8.8

[1] Endangered Species Act (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 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.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Harbor seal estimate is based on data that are 8 years old, but this is the best available information for use here.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity 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 and Determination'' 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.

Potential impacts to marine mammals from the proposed Mukilteo ferry terminal construction are from noise generated during in-water pile driving and pile removal activities.

Acoustic Effects

Here, we first provide background information on marine mammal hearing before discussing the potential effects of the use of active acoustic sources on marine mammals.

Marine Mammal Hearing—Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, 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 directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall et al. (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz, with best hearing estimated to be from 100 Hz to 8 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz, with best hearing between 1–50 kHz;
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz, with best hearing between 2–48 kHz.
- The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Nine marine mammal species (5 cetacean and 4 pinniped (2 otariid and 2 phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, 2 are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 1 is classified as mid-frequency cetaceans (*i.e.,* killer whale), and 2 are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Dall's porpoise).

The WSDOT's Mukilteo Multimodal construction work using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.,* 2007).

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 decibel (dB) or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.* (2009) found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak–to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating exposure. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. Therefore, based on these studies, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.,* 2002; Kastelein and Jennings, 2012).

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 (similar to those discussed in auditory masking, below). 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. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). For WSDOT's Mukilteo Multimodal construction activities, noises from vibratory pile driving and pile removal contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to ongoing shipping, construction and other activities in the Puget Sound.

Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as: 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 noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as vibratory pile driving). For the WSDOT's Mukilteo Multimodal construction activities, both of these noise levels are considered for effects analysis because WSDOT plans to use both impact and vibratory pile driving, as well as vibratory pile removal.

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 biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound (such as noise from impact pile driving) rather than continuous signals (such as noise from vibratory pile driving) (Blaxter *et al.,* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

During the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on marine mammals' prey availability in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

Estimated Take

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 primarily be by Level B harassment, as noise generated from in-water impact pile driving and vibratory pile driving and pile removal has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency cetaceans (harbor and Dall's porpoises) and phocid seals (harbor and northern elephant seals) due to larger predicted auditory injury zones. Auditory injury is unlikely to occur for low- and mid-frequency cetaceans and otarrids. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. Below we describe how the take is estimated.

Basis for Takes

Take estimates are based on average marine mammal density in the project area multiplied by the area size of ensonified zones within which received noise levels exceed certain thresholds (*i.e.,* Level A and/or Level B harassment) from specific activities, then multiplied by the total number of days such activities would occur. Certain adjustments were made for marine mammals whose local abundance are known through long-term monitoring efforts. Therefore, their local abundance data are used for take calculation instead of general animal density (see below).

Basis for Threshold Calculation

As discussed above, in-water pile removal and pile driving (vibratory and impact) generate loud noises that could potentially harass marine mammals in the vicinity of WSDOT's proposed Mukilteo Multimodal project.

Under the NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance), dual criteria are used to assess marine mammal auditory injury (Level A harassment) as a result of noise exposure (NMFS 2016). The dual criteria under the Guidance provide onset thresholds in instantaneous peak SPLs (L_{pk}) as well as 24-hr cumulative sound exposure levels (SEL_{cum} or L_E) that could cause PTS to marine mammals of different hearing groups. The peak SPL is the highest positive value of the noise field, log transformed to dB in reference to 1 μPa.

$$L_{pk} = \max\left\{10\log10\left(\frac{p(t)}{p_{ref}}\right)^2\right\} \quad (1)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, and p_{ref} is reference acoustic pressure equal to 1 μPa.

The cumulative SEL is the total sound exposure over the entire duration of a given day's pile driving activity, specifically, pile driving occurring within a 24-hr period.

$$L_E = 10\log_{10}\left(\int_{t_1}^{t_2}\left(\frac{p(t)}{p_{ref}}\right)^2 dt\right) \quad (2)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, p_{ref} is reference acoustic pressure equals to 1 μPa, t_1 marks the beginning of the time, and t_2 the end of time.

For onset of Level B harassment, NMFS continues to use the root-mean-square (rms) sound pressure level (SPL_{rms}) at 120 dB re 1 μPa and 160 dB re 1 μPa as the received levels from non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. The SPL_{rms} for pulses (such as those from impact pile driving) should contain 90 percent of the pulse energy, and is calculated by

$$SPL_{rms} = 10\log_{10}\left(\frac{1}{T}\int_{t_1}^{t_2}\left(\frac{p(t)}{p_{ref}}\right)^2 dt\right) \quad (3)$$

where $p(t)$ is acoustic pressure in pascal or micropascal, p_{ref} is reference acoustic pressure equals to 1 μPa, t_1 marks the beginning of the time, and t_2 the end of time. In the case of an impulse noise, t_1 marks the time of 5 percent of the total energy window, and t_2 the time of 95 percent of the total energy window.

Table 3 summarizes the current NMFS marine mammal take criteria.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Hearing Group	PTS Onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB	$L_{rms,flat}$: 160 dB	$L_{rms,flat}$: 120 dB
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB		

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER—Continued

Hearing Group	PTS Onset thresholds		Behavioral thresholds	
	Impulsive	Non-impulsive	Impulsive	Non-impulsive
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB		
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB		
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB		

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (LE) has a reference value of 1μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Sound Levels and Acoustic Modeling for the Proposed Construction Activity

Source Levels

The project includes vibratory pile driving and removal of 24-, 30-, and 36-inch (in) steel piles, vibratory driving of 78- and 120-in steel shaft, vibratory driving of steel H-piles, vibratory driving and removal of steel sheet piles, and impact pile driving and proofing of 24- and 30-in steel piles.

Source levels of the above pile driving activities are based on measurements of the same material types and same or similar dimensions of piles measured at Mukilteo or elsewhere. Specifically, the source level for vibratory pile driving and removal of the 24-in steel pile is based on vibratory test pile driving of the same pile at the Friday Harbor (WSDOT, 2010a). The unweighted SPL_{rms} source level at 10 m from the pile is 162 dB re 1 re 1 μPa. We consider that using vibratory pile installation source level as a proxy for vibratory pile removal is conservative.

The source level for vibratory pile driving and removal of the 30-in steel pile is based on vibratory pile driving of the same pile at Port Townsend (WSDOT, 2010b). The unweighted SPL_{rms} source level at 10 m from the pile is 174 dB re 1 re 1 μPa.

The source level for vibratory pile driving the 36-in steel piles is based on vibratory test pile driving of 36-in steel piles at Port Townsend in 2010 (Laughlin 2011). Recordings of vibratory pile driving were made at a distance of 10 m from the pile. The results show that the unweighted SPL_{rms} for vibratory pile driving of 36-in steel pile was 177 dB re 1 μPa.

Source level for vibratory pile driving of the 78- and 120-in steel shaft is based on measurements of 72-in steel piles vibratory driving conducted by CALTRANS. The unweighted SPL_{rms} source level ranged between 170 and 180 dB re 1 μPa at 10 m from the pile (CALTRANS 2012). The value of 180 dB is chosen to be more conservative.

The source level for vibratory pile driving of steel H-piles is based on measurements conducted by the California Department of Transportation (CALTRANS). The unweighted SPL_{rms} source level is 150 dB re 1 re 1 μPa at 10 m from the pile (CALTRANS, 2012).

The source level for vibratory sheet pile driving and removal is based on measurements at the Elliott Bay Seawall Project. The unweighted SPL_{rms} source level is 164 dB re 1 re 1 μPa at 10 m from the pile (Greenbusch 2015).

Source levels for impact pile driving of the 24-in steel piles are based on impact test pile driving of the same steel pile during the Vashon Acoustic Monitoring by WSDOT (Laughlin, 2015). The unweighted back-calculated source levels at 10 m are 174 dB re 1 μPa^2-s for single strike SEL (SEL_{ss}) and 189 dB re 1 μPa for SPL_{rms}.

Source levels for impact pile driving of the 30-in steel pile are based on impact test pile driving for the 36-in steel pile at Mukilteo in November 2006. Recordings of the impact pile driving that were made at a distance of 10 m from the pile were analyzed using Matlab. The results show that the unweighted source levels are 178 dB re 1 μPa^2-s for SEL_{ss} and 193 dB re 1 μPa for SPL_{rms}.

A summary of source levels from different pile driving and pile removal activities is provided in Table 4.

TABLE 4—SUMMARY OF IN-WATER PILE DRIVING SOURCE LEVELS

[At 10 m from source]

Method	Pile type/size (inch)	SEL (SEL_{ss} for impact pile driving), dB re 1 μPa^2-s	SPL_{rms}, dB re 1 μPa^2
Vibratory driving/removal	Steel, 24-in	162	162
Vibratory driving/removal	Steel, 30-in	174	174
Vibratory driving	Steel, 36-in	177	177
Vibratory driving	Steel shaft, 78-in	180	180
Vibratory driving	Steel shaft, 120-in	180	180
Vibratory driving	Steel H-pile, 12-in	150	150
Vibratory driving/removal	Steel sheet	164	164

TABLE 4—SUMMARY OF IN-WATER PILE DRIVING SOURCE LEVELS—Continued

[At 10 m from source]

Method	Pile type/size (inch)	SEL (SEL_{ss} for impact pile driving), dB re 1 μPa²-s	SPL_{rms}, dB re 1 μPa²
Impact driving	Steel, 24-in	174	189
Impact driving	Steel, 30-in	178	193

These source levels are used to compute the Level A ensonified zones and to estimate the Level B harassment zones. For Level A harassment zones, zones calculated using cumulative SEL are all larger than those calculated using SPL_{peak}, therefore, only zones based on cumulative SEL for Level A harassment are used.

Source spectrum of the 36-in steel pile recording is used for spectral modeling for the 24-, 30-, and 36-in steel pile vibratory pile driving and removal to calculate Level A exposure distances based on cumulative SEL metric (see below).

For other piles where no recording is available, source modeling cannot be performed. In such cases, the weighting factor adjustment (WFA) recommended by NMFS acoustic guidance (NMFS 2016) was used to determine Level A exposure distances.

Estimating Injury Zones

Calculation and modeling of applicable ensonified zones are based on source measurements of comparable types and sizes of piles driven by different methods (impact vs. vibratory hammers) as described above. As mentioned earlier, isopleths for injury zones are based on cumulative SEL (L_E) criteria.

For peak SPL (L_{pk}), distances to marine mammal injury thresholds were calculated using a simple geometric spreading model using a transmission loss coefficient of 15:

$$SL_{Measure} = EL + 15\log_{10}\left(R - D_{Measure}\right) \quad (4)$$

where $SL_{Measure}$ is the measured source level in dB re 1 μPa, EL is the specific received level of threshold, $D_{Measure}$ is the distance (m) from the source where measurements were taken, and R is the distance (radius) of the isopleth to the source in meters.

For cumulative SEL (L_E), distances to marine mammal exposure thresholds were computed using spectral modeling that incorporates frequency specific absorption. First, representative pile driving sounds recorded during test pile driving with impact and vibratory hammers were used to generate power spectral densities (PSDs), which describe the distribution of power into frequency components composing that sound, in 1-Hz bins. Parseval's theorem, which states that the sum of the square of a function is equal to the sum of the square of its transform, was applied to ensure that all energies within a strike (for impact pile driving) or a given period of time (for vibratory pile driving) were captured through the fast Fourier transform, an algorithm that converts the signal from its original domain (in this case, time series) to a representation in frequency domain. For impact pile driving, broadband PSDs were generated from SPL_{rms} time series with a time window that contains 90 percent of each pulse energy. For vibratory pile driving, broadband PSDs were generated from a series of continuous 1-second SEL. Broadband PSDs were then adjusted based on weighting functions of marine mammal hearing groups (Finneran 2016) by using the weighting function as a band-pass filter. For impact pile driving, cumulative exposures (E_{sum}) were computed by multiplying the single rms pressure squared by rms pulse duration for the specific strike, then by the number of strikes (provided in Table 1) required to drive one pile, then by the number of piles to be driven in a given day, as shown in the equation below:

$$E_{sum} = \sum_{i=1}^{N} p_{rms,i}^{2} \tau_i N_s \quad (5)$$

where $p_{rms,i}$ is the rms pressure, τ is the rms pulse duration for the specific strike, N_s is the anticipated number of strikes (provided in Table 1) needed to install one pile, and N is the number of total piles to be installed.

For vibratory pile driving, cumulative exposures were computed by summing 1-second noise exposure by the duration needed to drive on pile (provided in Table 1), then by the number of piles to be driven in a given day, as shown in the equation below:

$$E_{sum} = \sum_{i=1}^{N} E_{1s,i} \Delta t_i \quad (6)$$

where E_{1s} is the 1-second noise exposure, and Δt is the duration (provided in Table 1) need to install 1 pile by vibratory piling.

Frequency-specific transmission losses, $TL(f)$, were then computed using practical spreading along with frequency-specific absorption coefficients that were computed with nominal seawater properties (*i.e.,* salinity = 35 psu, pH = 8.0) at 15° C at the surface by

$$TL(f) = 15\log_{10}(R) + \alpha(f)R/1000 \qquad (7)$$

where $\alpha(f)$ is dB/km, and R is the distance (radius) of the specific isopleth to the source in meters. For broadband sources such as those from pile driving, the transmission loss is the summation of the frequency-specific results.

Approach to Estimate Behavioral Zones

As mentioned earlier, isopleths to Level B behavioral zones are based on root-mean-square SPL (SPL_{rms}) that are specific for impulse (impact pile driving) and non-impulse (vibratory pile driving) sources. Distances to marine mammal behavior thresholds were calculated using a simple geometric spreading equation as shown in Equation (4).

A summary of the measured and modeled harassment zones is provided in Table 5. The maximum distance is 20,500 m from the source, since this is where landmass intercepts underwater sound propagation.

TABLE 5—DISTANCES TO HARASSMENT ZONES

Pile type, size & pile driving method	Injury zone (m)					Behavior zone (m)
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Vibratory removal, 24-in steel pile, 3 piles/day	10	10	55	10	10	6,040
Vibratory driving, 24-in steel pile, 3 piles/day	175	45	995	85	10	6,040
Vibratory removal, 30-in steel pile, 2 piles/day	55	10	345	25	10	* 20,500
Vibratory removal, 30-in steel pile, 7 piles/day	125	35	725	55	10	* 20,500
Vibratory driving, 30-in steel pile, 3 piles/day	175	45	995	85	10	* 20,500
Vibratory driving, 36-in steel pile, 3 piles/day	175	45	995	85	10	* 20,500
Vibratory driving, 78-in steel shaft, 1 pile/day	126	11	186	77	5	* 20,500
Vibratory driving, 120-in steel shaft, 1 pile/day	126	11	186	77	5	* 20,500
Vibratory driving, steel 12-in H-pile, 10 piles/day	4	1	6	2	0	1,000
Vibratory driving, steel sheet, 3 piles/day	14	1	21	9	1	8,577
Vibratory removal, steel sheet, 6 piles/day	23	2	33	14	1	8,577
Impact proofing, 24-in steel pile, 3 piles/day	135	10	75	35	10	875
Impact driving, 30-in steel pile, 3 piles/day	1,065	10	505	225	10	1,585
Impact proofing, 30-in steel pile, 5 piles/day	355	10	175	75	10	1,585

* Landmass intercepts at a distance of 20,500m from project area.

Estimated Takes From Proposed Construction Activity

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a Level A or Level B harassment zone during active pile driving or removal. The Level A calculation includes a duration component, along with an assumption (which can lead to overestimates in some cases) that animals within the zone stay in that area for the whole duration of the pile driving activity within a day. For all marine mammal species except harbor seals, California sea lions, and northern elephant seals, estimated takes are calculated based on ensonified area for a specific pile driving activity multiplied by the marine mammal density in the action area, multiplied by the number of pile driving (or removal) days. In most cases, marine mammal density data are from the U.S. Navy Marine Species Density Database (Navy 2015). Harbor porpoise density is based on a recent study by Jefferson et al. (2016) for the Eastern Whidbey area near the Mukilteo Ferry Terminal. Harbor seal, northern elephant seal, and California sea lion takes are based on observations in the Mukilteo area, since these data provide the best information on distribution and presence of these species that are often associated with nearby haulouts (see below).

The Level A take total was further adjusted by subtracting animals expected to occur within the exclusion zone, where pile driving activities are suspended when an animal is observed in or approaching the zone (see Mitigation section). Further, the number of Level B takes was adjusted to exclude those already counted for Level A takes.

The harbor seal take estimate is based on local seal abundance information

from monitoring during the Mukilteo pier removal project. Marine mammal visual monitoring during Mukilteo Ferry Terminal pier removal project showed an average daily observation of 7 harbor seals (WSDOT 2015). Based on a total of 175 pile driving days for the WSDOT Mukilteo Multimodal Phase 2 project, it is estimated that up to 1,225 harbor seals could be exposed to noise levels associated with ''take''. Since 9 days would involve impact pile driving of 30-in piles with Level A harassment zones beyond the required shutdown zones (225 m vs 160 m shutdown zone), we consider that 63 harbor seals exposed during these 9 days would experience Level A harassment.

The California sea lion take estimate is based on local sea lion abundance information during the Mukilteo Ferry Terminal pier removal project (WSDOT 2015). Marine mammal visual monitoring during the Mukilteo pier removal project indicates on average 7 sea lions were observed in the general area of the Mukilteo Ferry Terminal per day (WSDOT 2015). Based on a total of 175 pile driving days for the WSDOT Mukilteo Multimodal project, it is estimated that up to 1,225 California sea lions could be exposed to noise levels associated with ''take''. Since the Level A harassment zones of otarids are all very small (max. 10 m, Table 5), we do not consider it likely that any sea lions would be taken by Level A harassment. Therefore, all California sea lion takes estimated here are expected to be by Level B harassment.

Northern elephant seal is not common in the Mukilteo Multimodal Project area, however, their presence has been observed in Edmonds area just south of Mukilteo (Huey, Pers. Comm. April 2017). Therefore, a potential take of 20 animals by Level B harassment during the project period is assessed. Since northern elephant seal is very uncommon in the project area, we do not consider it likely that any elephant seal would be taken by Level A harassment.

However, the method used in take estimates does not account for single individuals being taken multiple times during the entire project period of 175 days. Therefore, the percent of marine mammals that are likely to be taken for a given population would be far less than the ratio of numbers of animals taken divided by the population size. For harbor porpoise, the estimated incidences of takes at 6,759 animals would be 60.2% of the population, if each single take were a unique individual. However, this is highly unlikely because the results of telemetry and photo-identification studies in Washington waters have demonstrated that harbor porpoise shows site fidelity to small areas for periods of time that can extend between seasons (Hanson et al. 1999; Hanson 2007a, 2007b). Based on studies by Jefferson et al. (2016), harbor porpoise abundance in the East Whidbey region, which is adjunct to the Mukilteo Ferry Terminal construction, is 497, and harbor porpoise abundance in the entire surrounding area of North Puget Sound is 1,798.

For Southern Resident killer whales, potential takes based on density calculation showed that 4 animals could be exposed to noise levels for Level B harassment. However, mitigation measures prescribed below will prevent such takes.

A summary of estimated marine mammal takes is listed in Table 6.

TABLE 6—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED NOISE LEVELS THAT CAUSE LEVEL A OR LEVEL B HARASSMENT

Species	Estimated Level A take	Estimated Level B take	Estimated total take	Abundance	Percentage
Pacific harbor seal	63	1,162	1,225	11,036	11.1
California sea lion	0	1,225	1,225	296,750	0.41
Northern elephant seal	0	20	20	179,000	0.01
Steller sea lion	0	232	232	71,562	0.32
Killer whale, transient	0	21	21	243	8.64
Killer whale, Southern Resident	0	0	0	78	0
Gray whale	0	45	45	20,990	0.21
Humpback whale	0	6	6	1,918	0.31
Harbor porpoise	61	6,698	6,759	11,233	60.2
Dall's porpoise	4	417	421	25,750	1.63

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. 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.

Mitigation for Marine Mammals and Their Habitat

1. Time Restriction

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between August 1, 2017, and February 15, 2018.

2. Use of Noise Attenuation Devices

To reduce impact on marine mammals, WSDOT shall use a marine pile driving energy attenuator (*i.e.,* air bubble curtain system), or other equally effective sound attenuation method (*e.g.,* dewatered cofferdam) for all impact pile driving.

3. Establishing and Monitoring Level A, Level B Harassment Zones, and Exclusion Zones

Before the commencement of in-water construction activities, which include impact pile driving and vibratory pile driving and pile removal, WSDOT shall establish Level A harassment zones where received underwater SPLs or SEL_{cum} could cause PTS (see above).

WSDOT shall also establish Level B harassment zones where received underwater SPLs are higher than 160 dB_{rms} and 120 dB_{rms} re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and pile removal), respectively.

WSDOT shall establish a maximum 160-m Level A exclusion zone for all marine mammals except low-frequency baleen whales. For Level A harassment zones that are smaller than 160 m from the source, WSDOT shall establish exclusion zones that correspond to the estimated Level A harassment distances, but shall not be less than 10 m. For low-frequency baleen whales, WSDOT shall establish exclusion zones that correspond to the actual Level A harassment distances, but shall not be less than 10 m.

A summary of exclusion zones is provided in Table 7.

TABLE 7—EXCLUSION ZONES FOR VARIOUS PILE DRIVING ACTIVITIES AND MARINE MAMMAL HEARING GROUPS.

Pile type, size and pile driving method	Injury zone (m)				
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid
Vibratory removal, 24-in steel pile, 3 piles/day	10	10	55	10	10
Vibratory removal, 30-in steel pile, 2 piles/day	55	10	160	25	10
Vibratory removal, 30-in steel pile, 7 piles/day	125	35	160	55	10
Vibratory driving, 24-, 30- & 36-in steel pile, 3 piles/day	175	45	160	85	10
Vibratory driving, 78-, 120-in steel shaft, 1 pile/day	126	11	160	77	10
Vibratory driving, steel 12-in H-pile, 10 piles/day	4	1	6	2	1
Vibratory driving, steel sheet, 3 piles/day	14	1	21	9	1
Vibratory removal, steel sheet, 6 piles/day	23	2	33	14	1
Impact proofing, 24-in steel pile, 3 piles/day	135	10	75	35	10
Impact driving, 30-in steel pile, 3 piles/day	1,065	10	160	160	10
Impact proofing, 30-in steel pile, 5 piles/day	355	10	160	75	10

NMFS-approved protected species observers (PSO) shall conduct an initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones before pile driving and pile removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 30 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 30 minutes have elapsed since the last sighting.

4. Soft Start

A ''soft-start'' technique is intended to allow marine mammals to vacate the area before the impact pile driver reaches full power. Whenever there has been downtime of 30 minutes or more without impact pile driving, the contractor will initiate the driving with ramp-up procedures described below.

Soft start for impact hammers requires contractors to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Each day, WSDOT will use the soft-start technique at the beginning of impact pile driving, or if pile driving has ceased for more than 30 minutes.

5. Shutdown Measures

WSDOT shall implement shutdown measures if a marine mammal is detected within an exclusion zone or is about to enter an exclusion zone listed in Table 6.

WSDOT shall also implement shutdown measures if southern resident killer whales are sighted within the vicinity of the project area and are approaching the Level B harassment zone (or Zone of Influence, ZOI) during in-water construction activities.

If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a Southern Resident killer whale or a transient killer whale, it shall be assumed to be a Southern Resident killer whale and WSDOT shall implement the shutdown measure.

If a Southern Resident killer whale or an unidentified killer whale enters the ZOI undetected, in-water pile driving or pile removal shall be suspended until the whale exits the ZOI to avoid further level B harassment.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA (if issued) and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

6. Coordination With Local Marine Mammal Research Network

Prior to the start of pile driving for the day, the Orca Network and/or Center for Whale Research will be contacted by WSDOT to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The NMFS Northwest Fisheries Science Center, the Center for

Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, all of which are described above, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable adverse impact on the affected 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 or stocks in the area in which take is anticipated (*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) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its Mukilteo Multimodal Project. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;
2. At least one observer must have prior experience working as an observer;
3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;
4. 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
5. NMFS will require submission and approval of observer CVs;

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 × 42 power). Due to the different sizes of ZOIs from different pile sizes, several different ZOIs and different monitoring protocols corresponding to a specific pile size will be established.

- For Level A zones less than 160 m and Level B zones less than 1,000 m (*i.e.,* vibratory 12-in H pile driving, 10 piles/day; impact proofing of 24-in steel piles, 3 piles/day), two land-based PSOs will monitor the exclusion zones and Level B harassment zone.
- For Level A zones between 160 and 500 m, and Level B zones between 1,000 and 10,000 m (*i.e.*, vibratory pile driving and removal of 24-in steel piles, 3 piles/day; vibratory driving and removal of steel sheet; and impact proofing of 30-in steel piles, 5 piles/day), 5 land-based PSOs and 1 vessel-based PSO on a ferry will monitor the Level A and Level B harassment zones.
- For the rest of the pile driving and pile removal scenario, 5 land-based PSOs and 2 vessel-based PSOs on ferries will monitor the Level A and Level B harassment zones.

Locations of the land-based PSOs and routes of monitoring vessels are shown in WSDOT's Marine Mammal Monitoring Plan, which is available online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

To verify the required monitoring distance, the exclusion zones and ZOIs will be determined by using a range finder or hand-held global positioning system device.

Proposed Reporting Measures

WSDOT would be required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require WSDOT to notify NMFS' Office of Protected Resources and NMFS' West Coast Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. WSDOT shall provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WSDOT finds an injured or dead marine mammal that is not in the construction area, WSDOT would report the same information as listed above to NMFS as soon as operationally feasible.

Negligible Impact Analysis and Determination

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).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 7, given that the anticipated effects of WSDOT's Mukilteo Multimodal Project activities involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

Although a few marine mammal species (63 harbor seals, 61 harbor porpoises, and 4 Dall's porpoise) are estimated to experience Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals because most animals will avoid the area, and thus avoid injury. It is expected that, if hearing impairments occurs, most likely the affected animal would loss a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kHz. Therefore, the degree of PTS is not likely to affect the echolocation performance of the two porpoise species, which use frequencies mostly above 100 kHz. Nevertheless, for all marine mammal species, it is known that in general animals avoid areas where sound levels could cause hearing impairment. Therefore it is not likely that an animal would stay in an area with intense noise that could cause severe levels of hearing damage. In addition, even if an animal receives a TTS, the TTS would be a one-time event from the exposure, making it unlikely that the TTS would evolve into PTS. Furthermore, Level A take estimates were based on the assumption that the animals are randomly distributed in the project area and would not avoid intense noise levels that could cause TTS or PTS. In reality, animals tend to avoid areas where noise levels are high (Richardson *et al.,* 1995).

For the rest of the three marine mammal species, takes that are anticipated and proposed to be authorized are expected to be limited to short-term Level B harassment (behavioral and TTS). Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal and the implosion noise. These behavioral distances are not expected to affect marine mammals' growth, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals in the Puget Sound. A few marine mammals could experience TTS if they occur within the Level B TTS ZOI. However, as discussed earlier in this document, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Therefore, it is not considered an injury.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section. There is no ESA designated critical area in the vicinity of the Mukilteo Multimodal Project area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus 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. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, WSDOT's proposed construction activity at Mukilteo Ferry Terminal would not adversely affect marine mammal habitat.

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 take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals.

The estimated takes are below 12 percent of the population for all marine mammals except harbor porpoise (Table 7). For harbor porpoise, the estimate of 6,759 incidences of takes would be 60.2 percent of the population, if each single take were a unique individual. However, this is highly unlikely because the harbor porpoise in Washington waters shows site fidelity to small areas for periods of time that can extend between seasons (Hanson et al. 1999; Hanson 2007a, 2007b). For example, Hanson et al. (1999) tracked a female harbor porpoise for 215 days, during which it remained exclusively within the southern Strait of Georgia region. Based on studies by Jefferson et al. (2016), harbor porpoise abundance in the East Whidbey region, which is

adjunct to the Mukilteo Ferry Terminal construction, is 497, and harbor porpoise abundance in the entire surrounding area of North Puget Sound is 1,798. Therefore, if the estimated incidents of take accrued to all the animals expected to occur in the entire North Puget Sound area (1,798 animals), it would be 16.01 percent of the Washington inland water stock of the harbor porpoise.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Subsistence 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)

Issuance of an MMPA authorization requires compliance with the ESA for any species that are listed or proposed as threatened or endangered.

The humpback whale and the killer whale (southern resident distinct population segment (DPS)) are the only marine mammal species listed under the ESA that could occur in the vicinity of WSDOT's proposed construction project. Two DPSs of the humpback whale stock, the Mexico DPS and the Central America DPS, are listed as threatened and endangered under the ESA, respectively. NMFS' Office of Protected Resources has initiated consultation with NMFS' West Coast Regional Office under section 7 of the ESA on the issuance of an IHA to WSDOT under section 101(a)(5)(D) of the MMPA for this activity.

NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WSDOT for conducting Mukilteo Multimodal Project phase 2 between August 1, 2016, and February 15, 2017, 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 Authorization is valid from August 1, 2017, through July 31, 2018.

2. This Authorization is valid only for activities associated with in-water construction work at the Mukilteo Multimodal Project phase 2 in the State of Washington.

3. (a) The species authorized taking by, Level A and Level B harassment and in the numbers shown in Table 6 are: Pacific harbor seal (*Phoca vitulina*), northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*P. dalli*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- Impact pile driving;
- Vibratory pile driving; and
- Vibratory pile removal.

4. Prohibitions.

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 6 of this notice. The taking by death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited unless separately authorized or exempted under the MMPA and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

5. Mitigation.

(a) *Time Restriction.* In-water construction work shall occur only during daylight hours.

(b) Establishment of Level A and Level B Harassment Zones.

(A) Before the commencement of in-water pile driving/removal activities, WSDOT shall establish Level A harassment zones. The modeled Level A zones are summarized in Table 5.

(B) Before the commencement of in-water pile driving/removal activities, WSDOT shall establish Level B harassment zones. The modeled Level B zones are summarized in Table 5.

(C) Before the commencement of in-water pile driving/removal activities, WSDOT shall establish exclusion zones. The proposed exclusion zones are summarized in Table 7.

(c) Monitoring of marine mammals shall take place starting 30 minutes before pile driving begins until 30 minutes after pile driving ends.

(d) Soft Start.

(i) When there has been downtime of 30 minutes or more without pile driving, the contractor will initiate the driving with ramp-up procedures described below.

(ii) Soft start for impact hammers requires contractors to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Each day, WSDOT will use the soft-start technique at the beginning of impact pile driving, or if pile driving has ceased for more than 30 minutes.

(e) Shutdown Measures.

(i) WSDOT shall implement shutdown measures if a marine mammal is detected within or to be approaching the exclusion zones provided in Table 7 of this notice.

(ii) WSDOT shall implement shutdown measures if southern resident killer whales (SRKWs) are sighted within the vicinity of the project area and are approaching the Level B harassment zone (zone of influence, or ZOI) during in-water construction activities.

(iii) If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSDOT shall implement the shutdown measure identified in 6(e)(ii).

(iv) If a SRKW enters the ZOI undetected, in-water pile driving or pile removal shall be suspended until the SRKW exits the ZOI to avoid further level B harassment.

(v) WSDOT shall implement shutdown measures if the number of any allotted marine mammal takes reaches the limit under the IHA, if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during pile removal activities.

(f) Coordination with Local Marine Mammal Research Network.

Prior to the start of pile driving, WSDOT will contact the Orca Network and/or Center for Whale Research to get real-time information on the presence or absence of whales before starting any pile driving.

6. Monitoring.

(a) Protected Species Observers.

WSDOT shall employ NMFS-approved PSOs to conduct marine

mammal monitoring for its construction project. NMFS-approved PSOs will meet the following qualifications.

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience.

(iv) 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.

(v) NMFS will require submission and approval of observer CVs.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal and driving.

(i) A 30-minute pre-construction marine mammal monitoring will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring will be required after the last pile driving or pile removal of the day. If the constructors take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional 30-minute pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.

(iii) Marine mammal visual monitoring will be conducted for different ZOIs based on different sizes of piles being driven or removed, as shown in maps in WSDOT's Marine Mammal Monitoring Plan.

(A) For Level A zones less than 160 m and Level B zones less than 1,000 m (*i.e.,* vibratory 12-in H pile driving, 10 piles/day; impact proofing of 24-in steel piles, 3 piles/day), two land-based PSOs will monitor the exclusion zones and Level B harassment zone.

(B) For Level A zones between 160 and 500 m, and Level B zones between 1,000 and 10,000 m (*i.e.*, vibratory pile driving and removal of 24-in steel piles, 3 piles/day; vibratory driving and removal of steel sheet; and impact proofing of 30-in steel piles, 5 piles/day), 5 land-based PSOs and 1 vessel-based PSO on a ferry will monitor the Level A and Level B harassment zones.

(C) For the rest of the pile driving and pile removal scenario, 5 land-based PSOs and 2 vessel-based PSOs on ferries will monitor the Level A and Level B harassment zones.

(iv) If marine mammals are observed, the following information will be documented:

(A) Species of observed marine mammals;

(B) Number of observed marine mammal individuals;

(C) Behavior of observed marine mammals;

(D) Location within the ZOI; and

7. Reporting:

(a) WSDOT shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work or within 90 days of the expiration of the IHA, whichever comes first. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury, or mortality, WSDOT shall immediately cease all operations and immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) description of the incident;

(iii) status of all sound source use in the 24 hours preceding the incident;

(iv) environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(v) description of marine mammal observations in the 24 hours preceding the incident;

(vi) species identification or description of the animal(s) involved;

(vii) the fate of the animal(s); and

(viii) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with WSDOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(E) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), WSDOT will immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether modifications in the activities are appropriate.

(F) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO 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, or scavenger damage), WSDOT shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators, within 24 hours of the discovery. WSDOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. WSDOT can continue its operations under such a case.

8. 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.

9. A copy of this Authorization must be in the possession of each contractor who performs the construction work at the Mukilteo Ferry Terminal.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the WSDOT's Mukilteo Multimodal Project Phase 2. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: May 4, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–09417 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF403

New England Fishery Management Council, Public Hearings

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

ACTION: Notice; Public hearings, request for comments.

SUMMARY: The New England Fishery Management Council will hold six public hearings and one webinar to solicit comments on the Omnibus Deep Sea Coral Amendment.

DATES: These meetings will be held May 22–26, 2017. For specific dates and times, see **SUPPLEMENTARY INFORMATION**. Written Public Comments must be received on or before 5 p.m. e.s.t., June 5, 2017; comments received prior to May 25, 2017 will be reviewed by the Habitat Committee at their May 30, 2017 committee meeting.

ADDRESSES: The hearing document is accessible electronically via the internet *http://www.nefmc.org/library/omnibus-deep-sea-coral-amendment* or by request to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

Meeting addresses: The meetings will be held in Montauk, NY, Narragansett, RI, New Bedford, MA, Gloucester, MA, Portsmouth, NH, Ellsworth, ME and via webinar. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Public Comments: Written public hearing comments on the Omnibus Deep Sea Coral Amendment may be sent by any of the following methods: Mail to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; email to the following address: *comments@nefmc.org* or fax to (978) 465–3116.

FOR FURTHER INFORMATION: Thomas A. Nies, Executive Director, New England Fishery Management Council; phone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council is conducting seven public hearings to solicit comments on the alternatives under consideration in the Draft Omnibus Deep-Sea Coral Amendment. More specifically, the Council is seeking feedback from the public on which alternatives should be selected and why. These hearings are being held by the Council in accordance with the National Environmental Policy Act. The Council plans to take final action on the amendment during its June 20–22, 2017 meeting in Portland, ME.

Deep-sea corals are fragile, slow-growing organisms that play an important role in the marine ecosystem and are vulnerable to various types of disturbance of the seafloor. The alternatives are designed to reduce the potential impacts of fishing activity on corals, as allowed under the Council's discretionary authority. Restrictions on bottom tending gear are being considered, with possible exemptions for some or all types of fixed gears. Potential coral management areas are located off the eastern Maine coast, in Jordan Basin and Georges Basin in the offshore Gulf of Maine, and in the canyon and slope region south of Georges Bank. The hearings are being held by the Council in accordance with the National Environmental Policy Act.

During each hearing, Council staff will brief the public on the draft amendment before receiving comments. The hearings will begin promptly at the time indicated above. If all attendees who wish to do so have provided their comments prior to the end time indicated, the hearing may conclude early. To the extent possible, the Council may extend hearings beyond the end time indicated above to accommodate all attendees who wish to speak.

Public Hearing, Dates and Locations

1. *Monday, May 22, 2017, 6–8 p.m.,* Montauk Playhouse Community Center, 240 Edgemere Street, Montauk, NY 11954
2. *Tuesday, May 23, 2017, 1–3 p.m.,* University of Rhode Island Bay Campus, Corless Auditorium, 215 South Ferry Road, Narragansett, RI 02882
3. *Tuesday, May 23, 2017, 5:30–7:30 p.m.,* Fairfield Inn and Suites, 185 MacArthur Drive, New Bedford, MA 02740
4. *Wednesday, May 24, 2017, 1–3 p.m.,* Mass. Dept. Marine Fisheries, Annisquam River Marine Fisheries Field Station, 30 Emerson Ave., Gloucester, MA 01930
5. *Wednesday, May 24, 2017, 5:30–7:30 p.m.,* Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801
6. *Thursday, May 25, 2017, 5–7 p.m.,* Ellsworth High School, 299 State Street, Ellsworth, ME 04605
7. *Friday, May 26, 2017, 1–2:30 p.m.,* Via Webinar, Register to listen and participate, *https://attendee.gotowebinar.com/register/98257139389273345*

Special Accommodations

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to this meeting date.

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

Dated: May 4, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–09435 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF405

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Council's Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet via webinar to develop recommendations for future MSB specifications.

DATES: The meeting will be held Tuesday, May 23, 2017, at 8 a.m. and end by 3 p.m.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option: *http://mafmc.adobeconnect.com/moncom2017/*.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* will also have details on webinar access and any background materials.

SUPPLEMENTARY INFORMATION: The Council's Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet to develop recommendations for future MSB specifications. There will be time for public questions and comments. The

Council utilizes the Monitoring Committee recommendations at each June Council meeting when setting the subsequent years' MSB specifications.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Council will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 4, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–09436 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR Agreement'')

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain two-way stretch polyester/rayon/spandex twill weave fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

DATES: *Effective:* May 10, 2017.

FOR FURTHER INFORMATION CONTACT: Maria Goodman, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

For Further Information On-Line: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf under ''Approved Requests,'' Reference number: 209.2017.04.03.Fabric.ST&RforMedline.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Pub. Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamation 7987 (February 28, 2006).

Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25.4 and 3.25.5, when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On April 3, 2017, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sandler, Travis and Rosenberg, P.A., on behalf of Medline Industries, Inc. for certain two-way stretch polyester/rayon/spandex twill weave fabric. On April 4, 2017, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by April 17, 2017, and any Rebuttal Comments to a Response must be submitted by April 21, 2017, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its offer to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings, at *http://otexa.trade.gov/caftaannex325.htm.*

Specifications: Two-way Stretch Polyester/Rayon/Spandex Twill Weave Fabric

HTS: 5515.11.00

Fiber Content: 69–75% polyester; 20–26% rayon, 2–8% spandex

Warp: Plied polyester/rayon staple with spandex filament

Filling: Plied textured polyester filament with spandex filament

Thread count: 47.2–51.2 warp ends per linear cm (120–130 warp ends per linear inch); 35.43–39.37 filling ends per linear cm (90–100 filling ends per linear inch)

Fabric weight: 194 to 206 grams per meter squared (5.7 to 6.1 ounces per square yard)

Finishing process: Softened

Coloration: Piece dyed, yarn dyed, bleached and printed

Performance Criteria

Dimensional Stability/Shrinkage (AATCC 135): +/ − 3%

Colorfastness to Laundering (AATCC 61): >/= 4.0 color change; >/= 3.5 staining for light colors (3.0 for dark colors)

Colorfastness to Crocking (AATCC 8): >/= 4.0 dry; >/= 3 wet for light colors (2.5 for dark colors).

Note: The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce the fabric. Dyeing, finishing and knitting can alter the characteristic of the yarn as it appears in the finished fabric. This specification therefore includes yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the fabric apply to the fabric itself prior to cutting and sewing of the finished garment. Such processing may alter the measurements.

Terry Labat,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2017–09430 Filed 5–9–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Assistant Secretary of Defense (Health Affairs), 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 Uniform Formulary Beneficiary Advisory Panel will take place.

DATES: Open to the public Thursday, June 22, 2017 from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The address of the open meeting is Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Edward Norton, 703–681–2890 (Voice), 703–681–1940 (Facsimile), *dha.ncr.health-it.mbx.baprequests@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Web site: *http://www.health.mil/About-MHS/Other-MHS-Organizations/Beneficiary-Advisory-Panel.* 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.

Purpose of the Meeting: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

Agenda:

1. Sign-In.
2. Welcome and Opening Remarks.
3. Public Citizen Comments.
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item).
   a. Ophthalmic-1 Agents.
   b. Pulmonary Miscellaneous.
5. Newly Approved Drugs Review.
6. Pertinent Utilization Management Issues.
7. Panel Discussions and Vote.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 Code of Federal Regulations (CFR) 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Written Statements: Pursuant to 41 CFR 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *http://facadatabase.gov/.* Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a ''Sign-Up Roster'' available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1-hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation. To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: May 5, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–09450 Filed 5–9–17; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0742; FRL–9959–69–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Air Pollution Regulations for Outer Continental Shelf (OCS) Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Air Pollution Regulations for Outer Continental Shelf (OCS) Activities'' to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR. Public comments were previously requested via the **Federal Register** on May 29, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 9, 2017.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0724, to (1) the EPA online using *http://www.regulations.gov* (our

preferred method), by email to *a-and-r-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ben Garwood, Air Quality Policy Division, Office of Air Quality Planning and Standards, C504–03, U.S. Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541–1358; fax number: (919) 541–5509; email address: *garwood.ben@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about the EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: Section 328 of the Clean Air Act gives EPA responsibility for regulating air pollution from outer continental shelf (OCS) sources located offshore of the states along the Pacific and Atlantic Coasts, and along the eastern Gulf of Mexico coast (off the coast of Florida). In general, these OCS sources must obtain preconstruction permits (usually Prevention of Significant Deterioration or ''PSD'' permits) and title V operating permits, and then maintain ongoing compliance with their permit conditions. Industry respondents include owners or operators of existing and new or modified OCS sources. These respondents must prepare permit applications and, after receiving their permits, conduct testing, monitoring, recordkeeping and reporting as required by their permits. The recordkeeping and reporting requirements are necessary so that the EPA can determine whether these sources are meeting all the requirements that apply to them. The EPA has delegated the authority to implement and enforce the OCS regulations for sources located off the coast of California to four local air pollution control agencies, and for sources located off a portion of the Atlantic Coast to three state agencies. These agency respondents must review sources' permit applications and reports, issue permits, observe performance tests and conduct inspections to ensure that the sources are meeting all the requirements that apply to them. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all federal actions conform with the State Implementation Plans (SIPs) to attain and maintain the NAAQS. Depending on the type of action, the federal entities must collect information themselves, hire consultants to collect the information or require applicants/sponsors of the federal action to provide the information.

The type and quantity of information required will depend on the circumstances surrounding the action. First, the entity must make an applicability determination. If the source is located within 25 miles of the state's seaward boundary as established in the regulations, the requirements are the same as those that would be applicable if the source were located in the corresponding onshore area. State and local air pollution control agencies are usually requested to provide information concerning regulation of offshore sources and are provided opportunities to comment on the proposed determinations. The public is also provided an opportunity to comment on the proposed determinations.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those which must apply for and obtain a permit pursuant the OCS permit program. In addition, state and local agencies that have been delegated authority to implement and enforce the OCS permit program, which must review permit applications and issue permits, are affected entities.

Respondent's obligation to respond: Mandatory (*see* 40 CFR part 55).

Estimated number of respondents: 37 industrial facilities and 5 state and local permitting agencies.

Frequency of response: On occasion, as necessary.

Total estimated burden: 27,018 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,365,385 (per year). This includes $30,816 annually in Operation and Maintenance costs.

Changes in estimates: There is a decrease of 1,156 hours in the total estimated respondent burden compared with the ICR most recently approved by OMB. This decrease is primarily due to a decrease in the projected number of OCS sources subject to the program.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2017–09168 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[9956–76–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Colorado's request to revise certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective June 9, 2017 for the State of Colorado's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on May 10, 2017 for the State of Colorado's other authorized programs.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use

to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On November 30, 2016, the Colorado Department of Public Health and Environment (CDPHE) submitted an application titled Colorado DPHE Online System for revisions to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed CDPHE's request to revise its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Colorado's request to revise its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 50–52, 61–63, 65, 70, 122, 125, 141, 240–270, 272–279, 403, 412, 437, 745, and 763 is being published in the **Federal Register**:

Part 52—Approval and Promulgation of Implementation Plans;
Part 62—Approval and Promulgation of State Plans for Designated Facilities and Pollutants;
Part 63—National Emission Standards for Hazardous Air Pollutant for Source Categories for Source Categories;
Part 70—State Operating Permit Programs;
Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;
Part 142—National Primary Drinking Water Regulations Implementation;
Part 239—Requirements for State Permit Program Determination of Adequacy;
Part 271—Requirements for Authorization of State Hazardous: Waste Program;
Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution;
Part 745—Lead-based Paint Poisoning Prevention in Certain Residential Structures; and
Part 763—Asbestos.

CDPHE was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Colorado's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information: (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Colorado's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Matthew Leopard,

Director, Office of Information Management.

[FR Doc. 2017–09447 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[9956–77–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Vermont's request to revise its National Primary Drinking Water Regulations Implementation EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective June 9, 2017 for the State of Vermont's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On March 24, 2017, the Vermont Department of Environmental Conservation (VT DEC) submitted an application titled Compliance Monitoring Data Portal (CMDP) for

revision to its EPA-approved drinking water program under title 40 CFR to allow new electronic reporting. EPA reviewed VT DEC's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Vermont's request to revise its Part 142 —National Primary Drinking Water Regulations Implementation program to allow electronic reporting under 40 CFR part 141 is being published in the **Federal Register**.

VT DEC was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Vermont's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Vermont's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Matthew Leopard,

Director, Office of Information Management.

[FR Doc. 2017–09448 Filed 5–9–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0715]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (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 July 10, 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* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents and Responses: 3,600 respondents; 79,243,541 responses.

Estimated Time per Response: .002 hours–50 hours.

Frequency of Response: On occasion, annual, and one-time reporting requirements; recordkeeping; and third party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for these collections are contained in Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. Section 222.

Total Annual Burden: 212,907 hours.

Total Annual Cost: $4,000,000.00.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential

treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, establishes the duty of telecommunications carriers to protect the confidentiality of its customers' proprietary information. This Customer Proprietary Network Information (CPNI) includes personally identifiable information derived from a customer's relationship with a provider of telecommunications services. This information collection implements the statutory obligations of Section 222. These regulations impose safeguards to protect customers' CPNI against unauthorized access and disclosure. In March 2007, the Commission adopted new rules that focused on the efforts of providers of telecommunications services to prevent pretexting. These rules require providers of telecommunications services to adopt additional privacy safeguards that, the Commission believes, will limit pretexters' ability to obtain unauthorized access to the type of personal customer information from carriers that the Commission regulates. In addition, in furtherance of the Telephone Records and Privacy Protection Act of 2006, the Commission's rules help ensure that law enforcement will have necessary tools to investigate and enforce prohibitions on illegal access to customer records.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–09453 Filed 5–9–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

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 Commission 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 9, 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 listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

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 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.

OMB Control Number: 3060–XXXX.

Title: Workplace Discrimination Complaints.

Form Numbers: FCC Form 5621 and FCC Form 5622.

Type of Review: New collection.

Respondents: Individuals.

Number of Respondents and Responses: 26 respondents and 26 responses.

Estimated Time per Response: 3.5 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for these collections are contained in 29 U.S.C. 206(d), 633a, 791, and 794a; 42 U.S.C. 2000e–16 and 2000ff–6(f).

Total Annual Burden: 91 hours.

Total Annual Cost: $15,000.

Privacy Impact Assessment: The FCC is drafting a Privacy Impact Assessment to cover the personally identifiable information (PIA) that will be collected, used, and stored.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: FCC employees, former employees and applicants for employment who believe they were denied equal employment opportunity based on race, color, religion, gender, national origin, age, physical or mental disability, genetic information and/or reprisal will complete FCC Form 5621 and FCC Form 5622.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–09464 Filed 5–9–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011426–063.

Title: West Coast of South America Discussion Agreement.

Parties: CMA CGM S.A.; Hamburg-Süd; King Ocean Services Limited, Inc.; and Seaboard Marine Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The amendment deletes MSC Mediterranean Shipping Company, SA as a party to the agreement.

Agreement No.: 012337–001.

Title: HSDG/Zim ECSA Space Charter Agreement.

Parties: Hamburg Sud; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: This amendment revises the Agreement to add an expiration date of December 27, 2017.

By Order of the Federal Maritime Commission.

Dated: May 5, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–09481 Filed 5–9–17; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 2017.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, NY 10045–0001. Comments can also be sent electronically to *comments.applications@ny.frb.org:*

1. *China Merchants Group Limited (CMG), Hong Kong Special Administrative Region, the People's Republic of China;* to engage *de novo* through its ownership and control of China International Marine Container Group (CIMC) Leasing USA Inc., Oakbrook Terrace, Illinois and indirect subsidiary of CMG, and thereby engage in leasing activities, pursuant to section 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, May 5, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–09485 Filed 5–9–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 2017.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Joyce V. Douglas Revocable Trust and Joyce V. Douglas, Trustee,* Lincoln, Nebraska; to retain voting shares of Bancook Corporation, and thereby retain voting shares of Farmers Bank of Cook, both of Cook, Nebraska.

Board of Governors of the Federal Reserve System, May 5, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–09484 Filed 5–9–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–R–65]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by June 9, 2017.

ADDRESSES: When commenting on the proposed information collections,

please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. Comments submitted in response to the 60-day FR Notice have been addressed in Appendix A of the ICR. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement with change of a previously collection; *Title of Information Collection:* Final Peer Review Organizations Sanction Regulations; *Use:* The Peer Review Improvement Act of 1982 amended Title XI of the Social Security Act (the Act), creating the Utilization and Quality Control Peer Review Organization Program. Section 1156 of the Act imposes obligations on health care practitioners and others who furnish or order services or items under Medicare. This section also provides for sanction actions, if the Secretary determines that the obligations as stated by this section are not met. Quality Improvement Organizations (QIOs) are responsible for identifying violations. The QIOs may allow practitioners or other entities, opportunities to submit relevant information before determining that a violation has occurred. The information collection requirements contained in this information collection request are used by the QIOs to collect the information necessary to make their decision. *Form Number:* CMS–R–65 (OMB control number: 0938–0444); *Frequency:* Occasionally; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 18; *Total Annual Hours:* 4,716. (For policy questions regarding this collection contact Tiffany Jackson-Dickey at 410–786–1124.)

Dated: May 5, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–09482 Filed 5–9–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10225]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 10, 2017.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10225 Disclosures Required of Certain Hospitals and Critical Access Hospitals Regarding Physician Ownership

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Disclosures Required of Certain Hospitals and Critical Access Hospitals Regarding Physician Ownership; *Use:* This information collection relates to the required third party disclosures by certain Medicare-participating hospitals and Critical Access Hospitals (CAHs) and physicians to their patients. The intent of the disclosure notice is to assist the patient in making an informed decision regarding their care. The disclosure requires hospitals and CAHs to disclose to its patients whether the hospitals/CAHs are physician-owned and, if so, the names of the physician-owners. The second disclosure requires all hospitals and CAHs that do not have a Doctor of Medicine (MD) or a Doctor of Osteopathic Medicine (DO) on the premises at all times to disclose this to patients upon admission or registration for both inpatient and specified outpatient services. *Form Number:* CMS–10225 (OMB Control Number: 0938–1034); *Frequency:* Occasionally; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 2,556; *Total Annual Responses:* 162,993; *Total Annual Hours:* 6,435. (For policy questions regarding this collection contact Natalie Clybourn at 410–786–5642).

Dated: May 5, 2017

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–09478 Filed 5–9–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–2497]

Draft Revisions to the Food and Drug Administration Blueprint for Prescriber Education for Extended-Release and Long-Acting Opioids; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of draft revisions to the ''FDA Blueprint for Prescriber Education for Extended-Release and Long-Acting Opioid Analgesics'' (Blueprint). The Blueprint is part of the FDA-approved risk evaluation and mitigation strategy (REMS) for extended release (ER) and long-acting (LA) opioid analgesic medications (ER/LA Opioid Analgesics REMS).

FDA is seeking comment on the draft revisions to the Blueprint and has added sections of draft revised Blueprint to the background materials for the public workshop scheduled for May 9–10, 2017. Although the draft revisions to the Blueprint will not be a discussion topic at the workshop, FDA expects the draft revisions to provide important context for discussions during the workshop.

DATES: To ensure that FDA considers your comments on the draft revisions to the Blueprint, submit either electronic or written comments by July 10, 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–2017–D–2497 for ''Draft Revisions to FDA Blueprint for Prescriber Education for Extended-Release and Long-Acting Opioids; Request for Comments.'' 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.

Submit written requests for single copies of the draft revised Blueprint to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft revised Blueprint.

FOR FURTHER INFORMATION CONTACT: Janelle Derbis, Center for Drug Evaluation and Research (HFD–1), Food and Drug Administration 20 North Michigan Ave., Suite 510, Chicago, IL 60602, 312–596–6516.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of draft revisions to the ''FDA Blueprint for Prescriber Education for Extended-Release and Long-Acting Opioid Analgesics'' (draft revisions to the Blueprint). In addition to seeking comment on the draft revisions to the Blueprint, FDA expects the draft revisions to create important context for discussions at a public workshop on issues and challenges associated with Federal efforts to support training on pain management and the safe prescribing, dispensing, and patient use of opioids (safe use of opioids) for health care providers. That workshop, which is scheduled for May 9–10, 2017, was previously announced in the **Federal Register** on April 18, 2017 (82 FR 18300).

I. Background

On July 12, 2012, FDA approved an ER/LA Opioid Analgesics REMS, including an FDA-created ''Blueprint for Prescriber Education for Extended-Release and Long-Acting (ER/LA) Opioid Analgesics.'' The goal of the REMS is to reduce serious adverse outcomes resulting from inappropriate prescribing, misuse, and abuse of ER/LA opioid analgesics while maintaining patient access to pain medications.

The ER/LA Opioid Analgesics REMS requires that training in the form of accredited continuing education be made available to health care providers who prescribe ER/LA opioid analgesics. The accredited continuing education must include all elements of the FDA Blueprint, which includes a basic outline and the core messages related to ER/LA opioid analgesics. FDA developed the Blueprint following extensive input from stakeholders and sought input on a draft version on November 7, 2011 (76 FR 68766), before approving it in 2012 as part of the ER/LA Opioid Analgesics REMS.

On May 3–4, 2016, FDA convened a joint meeting of the Drug Safety and Risk Management Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee to discuss whether this REMS assures safe use of these products; whether or not it is unduly burdensome to patient access to the drugs; and whether it (to the extent practicable) minimizes the burden to the health care delivery system (March 14, 2016, 81 FR 13372). FDA also sought input on possible modifications to the ER/LA Opioid Analgesic REMS, including expansion of the scope and content of prescriber training and expansion of the REMS program to include immediate release (IR) opioid analgesics. Advisory Committee members were in favor of modifying the REMS program to include the IR opioid analgesics as well as broadening the training program to include pain management. The majority of the members were in favor of a requirement for all prescribers to complete training. Many of the members recommended that the required training program be implemented through mechanisms outside the FDA REMS authority. The majority of members also stated that other health care providers involved in the management of pain should be included as a target audience for education, though they did not specify that the training should be mandatory for non-prescribing health care providers.

II. Potential Modifications to the FDA Blueprint

FDA is considering modifications to the existing Blueprint in light of recommendations from the May 2016 Advisory Committee meeting. The draft revisions to the Blueprint being made available pursuant to this notice would broaden the Blueprint to include information on pain management, including the principles of acute and chronic pain management; non-pharmacologic treatments for pain; and pharmacologic treatments for pain (both non-opioid analgesic and opioid analgesic). FDA intends to consider public input as it considers modifications to the ER/LA Opioid Analgesics REMS.

III. May 2017 Public Workshop

On April 18, 2017, FDA published a notice announcing a public workshop scheduled for May 9–10, 2017, to seek input on issues and challenges associated with Federal efforts to support training on pain management and the safe prescribing, dispensing, and patient use of opioids (safe use of opioids) for health care providers. Through the public workshop, FDA hopes to obtain additional insight from a variety of stakeholders on how best to ensure that health care providers receive training in pain management and the safe use of opioids. The draft revisions to the Blueprint being made available at *https://www.fda.gov/Drugs/NewsEvents/ucm553931.htm* are intended to provide important context for the public workshop's discussion. However, the Blueprint itself will not be a discussion topic at the workshop. FDA intends to consider any comments submitted to this docket as it considers possible modifications to the ER/LA Opioid Analgesics REMS.

Dated: May 4, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–09442 Filed 5–9–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nerve Agents and Certain Insecticides (Organophosphorus and/or Carbamate) Countermeasures

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Secretary is issuing a declaration pursuant to section 319F–3 of the Public Health Service Act to

provide liability protections consistent with that authority for medical countermeasures against nerve agents and organophosphorus insecticides that result in organophosphorus poisoning and carbamate insecticides that result in carbamate poisoning.

DATES: The declaration is effective as of April 11, 2017.

FOR FURTHER INFORMATION CONTACT: George W. Korch Jr., Ph.D., Acting Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of the U.S. Department of Health and Human Services to issue a declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. Using this authority, the Secretary is issuing this declaration for medical countermeasures against nerve agents and organophosphorus insecticides that result in organophosphorus poisoning and carbamate insecticides that result in carbamate poisoning. The purpose of issuing this declaration is to strengthen preparedness against these threats that pose an ongoing credible risk of a future public health emergency and does not indicate a change in threat information.

The declaration is published in full. We explain both the substantive and format changes in this supplementary section.

The PREP Act was enacted on December 30, 2005 as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (''PHS'') Act, adding section 319F–3, which addresses liability immunity, and section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. The Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, was enacted on March 13, 2013. Among other things, PAHPRA added sections 564A and 564B to the Federal Food, Drug & Cosmetic (FD&C) Act to provide new emergency authorities for dispensing approved products in emergencies and products held for emergency use. PAHPRA accordingly amended the definitions of Covered Countermeasures and qualified pandemic and epidemic products in section 319F–3 of the Public Health Service Act (the PREP Act provisions), so that products made available under these new FD&C Act authorities could be covered under PREP Act declarations. PAHPRA also extended the definition of qualified pandemic and epidemic products to include products or technologies intended to enhance the use or effect of a drug, biological product, or device used against the pandemic or epidemic or against adverse events from these products.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Section I, Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

Before issuing a declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency.[1] This determination is separate and apart from a declaration issued by the Secretary under section 319 of the PHS Act[2] that a disease or disorder presents a public health emergency or that, a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other declarations or determinations made under other authorities of the Secretary. The declaration states in section I the Secretary's determination that there is a credible risk that the release of nerve agents or organophosphorus insecticides and the resulting organophosphorus poisoning or the release of carbamate insecticides and the resulting carbamate poisoning may, in the future, constitute a public health emergency.

Section II, Factors Considered

In deciding whether and under what circumstances to issue a declaration with respect to a Covered Countermeasure, the Secretary must consider the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the countermeasure.[3] The declaration states these considerations in section II.

Section III, Recommended Activities

The Secretary must recommend the activities for which the PREP Act's liability immunity is in effect. These activities may include, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more Covered Countermeasures (Recommended Activities).[4] The declaration states the Recommended Activities in section III.

Section IV, Liability Immunity

The Secretary must also state that liability protections available under the PREP Act are in effect with respect to the Recommended Activities.[5] These liability protections provide that, ''[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure if a declaration . . . has been issued with respect to such countermeasure.''[6] The declaration includes the statement that liability immunity is in effect for Recommended Activities in section IV.

Section V, Covered Persons

The PREP Act's liability immunity applies to Covered Persons with respect to administration or use of a Covered Countermeasure. The term ''Covered Persons'' has a specific meaning, and is defined in the PREP Act to include manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the United States.[7] The PREP Act further defines the terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' as described below.[8]

A *manufacturer* includes a contractor or subcontractor of a manufacturer; a supplier or licenser of any product, intellectual property, service, research tool or component or other article used in the design, development, clinical testing, investigation or manufacturing of a Covered Countermeasure; and any or all of the parents, subsidiaries,

[1] 42 U.S.C. 247d–6d(b)(1).

[2] 42 U.S.C. 247d.

[3] 42 U.S.C. 247d–6d(b)(6).

[4] 42 U.S.C. 247d–6d(b)(1).

[5] 42 U.S.C. 247d–6d(b)(1).

[6] 42 U.S.C. 247d–6d(a)(1).

[7] 42 U.S.C. 247d–6d(i)(2).

[8] 42 U.S.C. 247d–6d(i).

affiliates, successors, and assigns of a manufacturer; [9]

A *distributor* means a person or entity engaged in the distribution of drugs, biologics, or devices, including but not limited to: Manufacturers; repackers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses and wholesale drug warehouses; independent wholesale drug traders; and, retail pharmacies; [10]

A *program planner* means a state or local government, including a Native American Tribe; a person employed by the state or local government; or other person who supervises or administers a program with respect to the administration, dispensing, distribution, provision, or use of a Covered Countermeasure, including a person who establishes requirements, provides policy guidance, or supplies technical or scientific advice or assistance or provides a facility to administer or use a Covered Countermeasure in accordance with the Secretary's declaration.[11] Under this definition, a private sector employer or community group or other person can be a program planner when it carries out the described activities.

A *qualified person* means a licensed health professional or other individual who is authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the state in which the countermeasure was prescribed, administered, or dispensed; or, a person within a category of persons identified as qualified in the Secretary's declaration.[12] Under this definition, the Secretary can describe in the declaration other qualified persons, such as volunteers, who are Covered Persons. Section V describes other qualified persons covered by this declaration.

The PREP Act also defines the word ''*person*'' as used in the Act: A *person* includes an individual, partnership, corporation, association, entity, or public or private corporation, including a federal, state, or local government agency or department.[13]

The declaration lists Covered Persons in section V to include manufacturers, distributors, program planners, qualified persons, and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

The declaration also lists in section V Additional Covered Persons to include: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, . . . to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency; (b) any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the FD&C Act; and, (c) any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

Section VI, Covered Countermeasures

As noted above, section III describes the Secretary's Recommended Activities for which liability immunity is in effect. This section identifies the countermeasures for which the Secretary has recommended such activities. The PREP Act states that a Covered Countermeasure must be a ''qualified pandemic or epidemic product,'' or a ''security countermeasure,'' as described immediately below; or a drug, biological product or device authorized for emergency use in accordance with section 564, 564A, or 564B of the FD&C Act.[14]

A *qualified pandemic or epidemic product* means a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act [15] that is: (i) Manufactured, used, designed, developed, modified, licensed or procured to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic or limit the harm such a pandemic or epidemic might otherwise cause; (ii) manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by such a drug, biological product or device; (iii) or, a product or technology intended to enhance the use or effect of such a drug, biological product, or device.[16]

A *security countermeasure* is a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act [17] that: (i)(a) The Secretary determines to be a priority to diagnose, mitigate, prevent or treat harm from any biological, chemical, radiological, or nuclear agent identified as a material threat by the Secretary of Homeland Security, or (b) to diagnose, mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent; and (ii) is determined by the Secretary of Health and Human Services to be a necessary countermeasure to protect public health.[18]

To be a Covered Countermeasure, qualified pandemic or epidemic products and security countermeasures also must be approved or cleared under the FD&C Act; [19] licensed under the PHS Act; [20] authorized for emergency use under sections 564, 564A, or 564B of the FD&C Act.[21] A qualified pandemic or epidemic product also may be a Covered Countermeasure when it is exempted under the FD&C Act for use as an investigational drug or device [22] that is the object of research for possible use for diagnosis, mitigation, prevention, treatment, cure or limit harm of a pandemic or epidemic or serious or life-threatening condition caused by such a drug or device. A security countermeasure also may be a Covered Countermeasure if it may reasonably be determined to qualify for approval or licensing within ten years after the Department's determination that procurement of the countermeasure is appropriate.

The declaration describes the Covered Countermeasures in Section VI as: Any antidote; any other drug; all components and constituent materials of these antidotes and other drugs; all devices and their constituent components used in the administration of these antidotes and other drugs; any diagnostic; or any other device to identify, prevent, or treat organophosphorus or carbamate poisoning or adverse events from such countermeasures.

The declaration also includes in section VI a statement referencing the statutory definitions of Covered Countermeasures to make clear that these statutory definitions limit the scope of Covered Countermeasures.

Section VII, Limitations on Distribution

The Secretary may specify that liability immunity is in effect only to Covered Countermeasures obtained

[9] 42 U.S.C. 247d–6d(i)(4).

[10] 42 U.S.C. 247d–6d(i)(3).

[11] 42 U.S.C. 247d–6d(i)(6).

[12] 42 U.S.C. 247d–6d(i)(8).

[13] 42 U.S.C. 247d–6d(i)(5).

[14] 42 U.S.C. 247d–6d(i)(1). Sections 564, 564A, and 564B of the FD&C Act may be found at 21 U.S.C. 360bbb–3, 360bbb–3a, and 360bbb–3b.

[15] 21 U.S.C. 321(g)(1), (h); 42 U.S.C. 262(i).

[16] 42 U.S.C. 247d–6d(i)(1)(A), (i)(7).

[17] 21 U.S.C. 321(g)(1), (h);42 U.S.C. 262(i).

[18] 42 U.S.C. 247d–6d(i)(1)(B),(c)(1)(B).

[19] 21 U.S.C. 301 *et seq.*

[20] 42 U.S.C. 262.

[21] 21 U.S.C. 360bbb–3, 360bbb–3a, 360bbb–3b.

[22] 21 U.S.C. 355(i), 360j(g).

through a particular means of distribution.[23]

The declaration states in section VII that liability immunity is afforded to Covered Persons for Recommended Activities related to: (a) Present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, or memoranda of understanding or other Federal agreements or activities directly conducted by the Federal Government; or (b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures to respond to an event covered by a declared emergency, including authorized activities that occur as part of the response before the formal declaration of an emergency. The declaration also provides in section VII definitions for ''Authority Having Jurisdiction'' and ''Declaration of an Emergency:''

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, Tribal, State, or Federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A declaration of emergency means any declaration by any authorized local, regional, State, or Federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a Federal declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such declaration specifies otherwise;

Subsection (b) is intended to cover distribution, dispensing, administration, or use of the covered countermeasure under a formal government-authorized response to circumstances at any time those activities occur to respond to an event that gives rise to a declared emergency. Subsection (b) is not intended to be limited to cover those activities only after an emergency is formally declared and includes authorized activities that occur as part of the response before the formal declaration of an emergency. The Secretary recognizes that in emergency circumstances, distribution, dispensing, administration, or use of countermeasures may need to be expedient and may occur prior to a formal declaration of an emergency. This concern is particularly critical for the countermeasures covered by this declaration, where the Covered Countermeasures may need to be administered within minutes of exposure to a nerve agent to save lives. Thus, the Secretary is clarifying that coverage under subsection (b) is intended to cover any distribution, dispensing, administration, or use in accordance with the Authority Having Jurisdiction at any time that those activities address the emergency circumstances that gave rise to the declared emergency even if the activities occur prior to the declaration itself.

For governmental program planners only, liability immunity is afforded only to the extent they obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles. This limitation on distribution is intended to deter program planners that are government entities from seizing privately held stockpiles of Covered Countermeasures. It does not apply to any other Covered Persons, including other program planners who are not government entities.

Section VIII, Category of Disease, Health Condition, or Threat

The Secretary must identify, for each Covered Countermeasure, the categories of diseases, health conditions, or threats to health for which the Secretary recommends the administration or use of the countermeasure.[24] The declaration states in section VIII that the category of disease, health condition, or threat for which the Secretary recommends administration or use of the countermeasures is organophosphorus or carbamate poisoning.

Section IX, Administration of Covered Countermeasures

The PREP Act does not explicitly define the term ''administration'' but does assign the Secretary the responsibility to provide relevant conditions in the declaration. The declaration defines administration in section IX as: Administration of a Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients; management and operation of countermeasure programs; or management and operation of locations for purpose of distributing and dispensing countermeasures.

This definition of ''administration'' is intended to extend only to physical provision of a countermeasure to a recipient, such as vaccination or handing drugs to patients, and to activities related to management and operation of programs and locations for providing countermeasures to recipients, such as decisions and actions involving security and queuing, but only insofar as those activities directly relate to the countermeasure activities. Claims for which Covered Persons are provided immunity under the Act are losses caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a Covered Countermeasure consistent with the terms of a declaration issued under the Act.[25] Under the Secretary's definition, these liability claims are precluded if the claims allege an injury caused by physical provision of a countermeasure to a recipient, or if the claims are directly due to conditions of delivery, distribution, dispensing, or management and operation of countermeasure programs at distribution and dispensing sites.

Thus, it is the Secretary's interpretation that, when a declaration is in effect, the Act precludes, for example, liability claims alleging negligence by a manufacturer in creating a vaccine, or negligence by a health care provider in prescribing the wrong dose, absent willful misconduct. Likewise, the Act precludes a liability claim relating to the management and operation of a countermeasure distribution program or site, such as a slip-and-fall injury or vehicle collision by a recipient receiving a countermeasure at a retail store serving as an administration or dispensing location that alleges, for example, lax security or chaotic crowd control. However, a liability claim alleging an injury occurring at the site that was not directly related to the countermeasure activities is not covered, such as a slip and fall with no direct connection to the countermeasure's administration or use. In each case, whether immunity is applicable will depend on the particular facts and circumstances.

[23] 42 U.S.C. 247d–6d(a)(5), (b)(2)(E).

[24] 42 U.S.C. 247d–6d(b)(2)(A).

[25] 42 U.S.C. 247d–6d(a).

Section X, Population

The Secretary must identify, for each Covered Countermeasure specified in a declaration, the population or populations of individuals for which liability immunity is in effect with respect to administration or use of the countermeasure.[26] This section explains which individuals should use the countermeasure or to whom the countermeasure should be administered—in short, those who should be vaccinated or take a drug or other countermeasure. The declaration provides in section X that the population includes any individual who uses or who is administered a Covered Countermeasure in accordance with the declaration.

In addition, the PREP Act specifies that liability immunity is afforded: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; and (2) to program planners and qualified persons when the countermeasure is either used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population.[27] We included these statutory conditions in the declaration section X for clarity.

Section XI, Geographic Area

The Secretary must identify, for each Covered Countermeasure specified in the declaration, the geographic area or areas for which liability immunity is in effect with respect to administration or use of the countermeasure, including, as appropriate, whether the declaration applies only to individuals physically present in the area or, in addition, applies to individuals who have a described connection to the area.[28] The declaration states in section XI that there are no limitations on geographic area.

In addition, the PREP Act specifies that liability immunity is afforded: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to individuals in the geographic areas; and (2) to program planners and qualified persons when the countermeasure is either used or administered in the geographic areas or the program planner or qualified person reasonably could have believed the countermeasure was used or administered in the areas.[29] We included these statutory conditions in the declaration section XI for clarity.

Section XII, Effective Time Period

The Secretary must identify, for each Covered Countermeasure, the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act.[30]

The declaration states in section XII when liability immunity takes effect for different means of distribution within that time period.

Section XIII, Additional Time Period of Coverage

The Secretary must specify a date after the ending date of the effective period of the declaration that is reasonable for manufacturers to arrange for disposition of the Covered Countermeasure, including return of the product to the manufacturer, and for other Covered Persons to take appropriate actions to limit administration or use of the Covered Countermeasure.[31] In addition, the PREP Act specifies that for Covered Countermeasures that are subject to a declaration at the time they are obtained for the Strategic National Stockpile under 42 U.S.C. 247d–6b(a), the effective period of the declaration extends through the time the countermeasure is used or administered pursuant to a distribution or release from the Stockpile. Liability immunity under the provisions of the PREP Act and the conditions of the declaration continues during these additional time periods. Thus, liability immunity is afforded during the ''Effective Time Period,'' described under section XII of the declaration, plus the ''Additional Time Period of Coverage'' described under section XIII of the declaration.

The declaration states in section XIII that the additional time period is twelve (12) months and also states that extended coverage applies to any products obtained for the Strategic National Stockpile during the effective period of the declaration. We included the statutory provision for clarity.

Section XIV, Countermeasures Injury Compensation Program

Section 319F–4 of the PREP Act authorizes a Countermeasures Injury Compensation Program (CICP) to provide benefits to eligible individuals who sustain a serious physical injury or die as a direct result of the administration or use of a Covered Countermeasure.[32] Compensation under the CICP for an injury directly caused by a Covered Countermeasure is based on the requirements set forth in this declaration, the administrative rules for the Program,[33] and the statute.[34] To show direct causation between a Covered Countermeasure and a serious physical injury, the statute requires ''compelling, reliable, valid, medical and scientific evidence.'' [35] The administrative rules for the Program further explain the necessary requirements for eligibility under the CICP. Please note that, by statute, requirements for compensation under the CICP may not always align with the requirements for liability immunity provided under the PREP Act. The declaration explains in section XIV, ''Countermeasures Injury Compensation Program'' the types of injury and standard of evidence needed to be considered for compensation under the CICP. Further, the administrative rules for the CICP specify if countermeasures are administered or used outside the United States, only otherwise eligible individuals at American embassies, military installations abroad (such as military bases, ships, and camps) or at North Atlantic Treaty Organization (NATO) installations (subject to the NATO Status of Forces Agreement) where American servicemen and servicewomen are stationed may be considered for CICP benefits. Other individuals outside the United States may not be eligible for CICP benefits.

Section XV, Amendments

The Secretary may amend any portion of a declaration through publication in the **Federal Register**.[36] The declaration states in section XV that any amendments to this declaration will be published in the **Federal Register**.

Declaration

Declaration for Public Readiness and Emergency Preparedness Act Coverage for Nerve Agents and Certain Insecticides (Organophosphorus and/or Carbamate) Countermeasures

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the release of nerve agents or organophosphorus insecticides and the resulting organophosphorus

[26] 42 U.S.C. 247d–6d(b)(2)(C).
[27] 42 U.S.C. 247d–6d(a)(4).
[28] 42 U.S.C. 247d–6d(b)(2)(D).
[29] 42 U.S.C. 247d–6d(a)(4).
[30] 42 U.S.C. 246d–6d(b)(2)(B), (b)(6).
[31] 42 U.S.C. 247d–6d(b)(3).
[32] 42 U.S.C. 247d–6e.
[33] 42 CFR part 110.
[34] 42 U.S.C. 247d–6e.
[35] 42 U.S.C. 247d–6e(b)(4).
[36] 42 U.S.C. 247d–6d(b)(4).

poisoning or release of carbamate insecticides and the resulting carbamate poisoning may, in the future, constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this declaration, the manufacture, testing, development, distribution, administration, or use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this declaration is in effect for the Recommended Activities described in section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this declaration are ''manufacturers,'' ''distributors,'' ''program planners,'' ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a declaration of an emergency; (b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the FD&C Act; (c) Any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are: Any antidote; any other drug; all components and constituent materials of these antidotes and other drugs; all devices and their constituent components used in the administration of these antidotes and other drugs; any diagnostic; or any other device to identify, prevent, or treat organophosphorus or carbamate poisoning or adverse events from such countermeasures.

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future Federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other Federal agreements, or activities directly conducted by the Federal Government; or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures to respond to an event covered by a declared emergency, including authorized activities that occur as part of the response before the formal declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, Tribal, State, or Federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A declaration of emergency means any declaration by any authorized local, regional, State, or Federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a Federal declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such declaration specifies otherwise;

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from Federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is organophosphorus or carbamate poisoning.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in these geographic areas; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in these geographic areas, or the program planner or qualified person reasonably could have believed the recipient was in these geographic areas.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction extends through December 31, 2022.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins on the date the response to an event covered by an emergency declaration begins, including authorized activities that occur as part of the response before the formal declaration of an emergency, and lasts through (1) the final day the emergency declaration is in effect or (2) December 31, 2022, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(A), (B) and (C)

I have determined that an additional twelve (12) months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the Strategic National Stockpile (''SNS'') during the effective period of this declaration for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C. 247d–6e

The PREP Act authorizes a Countermeasures Injury Compensation Program (''CICP'') to provide benefits to certain individuals or estates of individuals who sustain a serious physical covered injury as the direct result of the administration or use of a Covered Countermeasure and/or benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasure. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration (''HRSA''), within the Department of Health and Human Services. Information about the CICP is available at the toll free number 1–855–266–2427 or *http://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

Any amendments to this declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Dated: May 4, 2017.

Thomas E. Price,

Secretary.

[FR Doc. 2017–09455 Filed 5–9–17; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel; Learning Disabilities Research Centers.

Date: June 22–23, 2017.

Time: 7:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health & Human Development, 6710B Rockledge Drive, Bethesda, MD 20892, Phone: 301–435–6911, Email: *HopmannM@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: July 24, 2017.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase, MD.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 4, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09413 Filed 5–9–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (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: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.
Date: June 5, 2017.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.
Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.
Date: June 5–6, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kondratyevad@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.
Date: June 5–6, 2017.
Time: 8:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.
Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.
Date: June 5–6, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Addiction Risks and Mechanisms Study Section.
Date: June 5–6, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 21201.
Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.
Date: June 5–6, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.
Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section.
Date: June 5–6, 2017.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@mail.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.
Date: June 5–6, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 21201.
Contact Person: Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300–6541, *boulaymg@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.
Date: June 5–6, 2017.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.
Contact Person: Stacey FitzSimmons, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.
Date: June 5–6, 2017.
Time: 8:30 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.
Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500–5829, *sechu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 15–326: Imaging—Science Track Award for Research Transition (I/Start) R03.
Date: June 5, 2017.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 4, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09411 Filed 5–9–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Library of Medicine Biomedical Library and Informatics Review Committee, June 15, 2017, 9:00 a.m. to 6:00 p.m., and June 16, 2017, 9:00 a.m. to 2:00 p.m., National Library of Medicine, Building 38, Lindberg Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD, 20892 which was published in the **Federal Register** on February 27, 2017, 82 FR 37, Page 11934.

The second day of the Biomedical Library and Informatics Review Committee meeting, June 16, 2017, will now be held from 8:00 a.m. to 6:00 p.m. instead of 8:00 a.m. to 2:00 p.m. The meeting is closed to the public.

Dated: May 4, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09414 Filed 5–9–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; Coordinating Center for Population-based Research to Optimize the Screening Process.

Date: June 13, 2017.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W112, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–9750, 240–276–5864, *jennifer.schiltz@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Biological Comparisons in Patient-Derived Models of Cancer.

Date: June 14, 2017.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Robert Coyne, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892–9750, 240–276–5120, *coynes@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Partnerships in Cancer Research (P20) and Cancer Health Equity (U54).

Date: June 20–21, 2017.

Time: 7:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Clifford Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W108, Bethesda, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 4, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–09412 Filed 5–9–17; 8:45 am]

BILLING CODE 4140–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–945]

Certain Network Devices, Related Software and Components Thereof (II); Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has determined to issue a limited exclusion order. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. 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 January 27, 2015, based on a Complaint filed by Cisco Systems, Inc. of San Jose, California (''Cisco''). 80 FR 4313–14 (Jan. 27, 2015). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, and sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,023,853; 6,377,577; 7,460,492; 7,061,875; 7,224,668; and 8,051,211. The Complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation named Arista Networks, Inc. of Santa Clara, California (''Arista'') as respondent. The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation. The Commission previously terminated the investigation in part as to certain claims of the asserted patents. Order No. 38 (Oct. 27, 2015), unreviewed Notice (Nov. 18, 2015); Order No. 47 (Nov. 9, 2015), unreviewed Notice (Dec. 1, 2015).

On December 9, 2016, the ALJ issued her Final ID, finding a violation of section 337 with respect to claims 1, 7, 9, 10, and 15 of the '577 patent; and claims 1, 2, 4, 5, 7, 8, 10, 13, 18, 56, and 64 of the '668 patent. The ALJ found no violation of section 337 with respect to claim 2 of the '577 patent; claims 46 and 63 of the '853 patent; claims 1, 3, and 4 of the '492 patent; claims 1–4, and 10 of the '875 patent; and claims 2, 6, 13, and 17 of the '211 patent.

In particular, the Final ID finds that Cisco has shown by a preponderance of the evidence that the accused products infringe asserted claims 1, 7, 9, 10, and 15 of the '577 patent; and asserted claims 1, 2, 4, 5, 7, 8, 10, 13, 18, 56, and

64 of the '668 patent. The Final ID finds that Cisco has failed to show by a preponderance of the evidence that the accused products infringe asserted claim 2 of the '577 patent; asserted claims 46 and 63 of the '853 patent; asserted claims 1, 3, and 4 of the '492 patent; asserted claims 1–4, and 10 of the '875 patent; and asserted claims 2, 6, 13, and 17 of the '211 patent.

The Final ID also finds that assignor estoppel bars Arista from asserting that the '577 and '853 patents are invalid. The Final ID finds, however, that if assignor estoppel did not apply, Arista has shown by clear and convincing evidence that claims 1, 7, 9, 10, and 15 of the '577 patent and claim 46 of the '853 patent are invalid as anticipated by U.S. Patent No. 5,920,886 (''Feldmeier''). The Final ID further finds that Arista has failed to show by clear and convincing evidence that any of the remaining asserted claims are invalid. The Final ID also finds that Arista has not proven by clear and convincing evidence that Cisco's patent claims are barred by equitable estoppel, waiver, implied license, laches, unclean hands, or patent misuse.

The Final ID finds that Cisco has satisfied the economic prong of the domestic industry requirement for all of the patents-in-suit pursuant to 19 U.S.C. 337(A), (B), and (C). The Final ID finds, however, that Cisco has failed to satisfy the technical prong of the domestic industry requirement with respect to the '875, '492, and '211 patents. The Final ID finds that Cisco has satisfied the technical prong with respect to the '577, '853, and '668 patents.

The Final ID also contains the ALJ's recommended determination on remedy and bonding. The ALJ recommended that the appropriate remedy is a limited exclusion order with a certification provision and a cease and desist order against Arista. The ALJ recommended the imposition of a bond of five (5) percent during the period of Presidential review.

On December 29, 2016, Cisco, Arista, and OUII each filed petitions for review of various aspects of the Final ID. On January 10, 2017, Cisco, Arista, and OUII filed responses to the various petitions for review.

On January 11, 2017, Cisco and Arista each filed a post-RD statement on the public interest pursuant to Commission Rule 210.50(a)(4). No responses were filed by the public in response to the post-RD Commission Notice issued on December 20, 2016. See Notice of Request for Statements on the Public Interest (Dec. 20, 2016); 81 FR 95194–95 (Dec. 27, 2016).

On March 1, 2017, the Commission determined to review the Final ID in part. Notice of Review (Mar. 1, 2017); 82 FR 12844–47 (Mar. 7, 2017).

With respect to the '577 patent, the Commission determined to review the Final ID's finding that Arista has indirectly infringed the '577 patent by importing Imported Components, as referenced at page 110 in the Final ID. The Commission also determined to review the Final ID's finding that Arista's post-importation direct infringement cannot alone support a finding of violation of section 337. The Commission further determined to review the Final ID's finding that Feldmeier anticipates claims 1, 7, 9, 10, and 15 of the '577 patent.

With respect to the '853 patent, the Commission determined to review the Final ID's claim construction findings with respect to claim elements (c), (d), and (f) of claim 46. The Commission also determined to review the Final ID's findings concerning direct and indirect infringement regarding the '853 patent. The Commission further determined to review the Final ID's finding that assignor estoppel applies to validity challenges based on indefiniteness. The Commission also determined to review the Final ID's finding that Feldmeier does not anticipate claim 46.

With respect to the '875 and '492 patents, the Commission determined to review the Final ID's finding of no direct infringement and the related finding of no indirect infringement. The Commission also determined to review the Final ID's finding that Cisco has failed to satisfy the technical prong of the domestic industry requirement with respect to the '875 and '492 patents.

With respect to the '668 patent, the Commission determined to review the Final ID's finding of direct infringement and the Final ID's finding of indirect infringement, in particular as concerns Arista's importation of Imported Components.

With respect to the '211 patent, the Commission determined to review the Final ID's finding that Cisco has failed to satisfy the technical prong with respect to claims 1 and 12 of the '211 patent, including the Final ID's finding that claims 1 and 12 are invalid.

The Commission determined not to review the remaining issues decided in the Final ID.

The Commission also requested briefing from the parties on nine questions concerning the issues under review, as well as remedy, the public interest, and bonding. See Notice of Review at 4–5; 82 FR at 12845–46.

On March 15, 2017, the parties submitted initial briefing in response to the notice of review. On March 24, 2017, the parties filed response submissions.

Having examined the record of this investigation, including the Final ID, the petitions for review, the responses thereto, and the parties' submissions on review, the Commission has determined to find that a violation of section 337 has occurred with respect to the asserted claims of the '577 and '668 patents.

Specifically, with respect to the '577 patent, the Commission did not review the Final ID's finding that all of Arista's Accused ACL Products directly infringe claims 1, 7, 9–10, and 13 of the '577 patent. The Commission has determined to affirm the Final ID's finding that Arista induces infringement of the '577 patent by importing both the Blank Switches and Imported Components (as defined at Final ID at 110 and Respondent Arista Networks Inc.'s Petition for Review of the Initial Determination on Violation of Section 337 (Dec. 29, 2016) at 77, 80). The Commission has further determined to affirm the Final ID's finding that Arista contributorily infringes by importing the Blank Switches. The Commission has determined not to reach the issue of whether Arista contributorily infringes the asserted claims of the '577 patent by importing the Imported Components. Based on the Final ID's unreviewed finding that assignor estoppel applies with respect to the '577 patent, the Commission has determined not to reach the issue of whether Feldmeier anticipates the '577 patent.

With respect to the '668 patent, the Commission has determined to affirm the Final ID's finding that several variations of the '668 Accused Products—including Control-Plane Access Control List, Control Plane Policing, and non-configurable Per-Input Port Control Plane Policing (''PiP CoPP'')—infringe asserted claims 1, 2, 4, 5, 7, 8, 10, 13, 56, and 64 of the '668 patent, and to affirm with modification the Final ID's finding that the variation including configurable PiP CoPP infringes those claims, to supply the Commission's reasoning. With respect to claim 64, the Commission has determined to affirm with modification the Final ID's finding of infringement with respect to claim 64 to correct a misstatement in the Final ID. The Commission has also determined to affirm the Final ID's finding that Arista induces infringement of the asserted claims of the '668 patent by importing fully assembled Blank Switches and the Imported Components. The Commission has further determined to affirm the Final ID's finding that Arista

contributorily infringes asserted claims 1, 2, 4, 5, 7, 8, 10, 13, 56, and 64 by importing fully assembled Blank Switches. The Commission has determined not to reach the issue of whether Arista contributorily infringes the asserted claims of the '668 patent by importing the Imported Components.

The Commission has determined to find no violation of section 337 with respect to the remaining asserted claims of the '853, '875, '492, and '211 patents.

Specifically, with respect to the '853 patent, the Commission has determined to affirm with modification, to supply the Commission's reasoning, the Final ID's finding that Arista's Accused ACL Products do not directly infringe claim 46, and to affirm the Final ID's finding that Arista does not directly infringe claim 63 of the '853 patent. Accordingly, the Commission has determined to affirm the Final ID's finding of no indirect infringement with respect to those claims. Based on the Final ID's unreviewed finding that assignor estoppel applies with respect to the '853 patent, the Commission has determined not to reach the issue of whether Feldmeier anticipates the '853 patent.

With respect to the '875 and '492 patents, the Commission has determined to affirm with modification the Final ID's finding of no infringement of the asserted claims and that Cisco has failed to satisfy the technical prong of the domestic industry requirement.

With respect to the '211 patent, the Commission did not review the Final ID's finding of no infringement with respect to the asserted claims of the '211 patent. The Commission has also determined to vacate the Final ID's finding with respect to the validity of claims 1 and 12 of the '211 patent, and declines to reach the technical prong issue.

The Commission has determined that the appropriate form of relief is a limited exclusion order under 19 U.S.C. 1337(d)(1), prohibiting the unlicensed entry of network devices, related software and components thereof that infringe any of claims l, 7, 9, 10, and 15 of the '577 patent; and claims 1, 2, 4, 5, 7, 8, 10, 13, 18, 56, and 64 of the '668 patent, and an order that Arista cease and desist from importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of certain network devices, related software and components thereof that infringe any of claims l, 7, 9, 10, and 15 of the '577 patent; and claims 1, 2, 4, 5, 7, 8, 10, 13, 18, 56, and 64 of the '668 patent.

The Commission has determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d) and (f), do not preclude the issuance of the limited exclusion order or cease and desist order. The Commission has determined that bonding at five (5) percent of the entered value of the covered products is required during the period of Presidential review, 19 U.S.C. 1337(j).

The Commission's order and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

The investigation is terminated.

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: May 4, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–09439 Filed 5–9–17; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (17–023)]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, May 25, 2017, 9:30 a.m. to 10:45 a.m., Central Time.

ADDRESSES: NASA Marshall Space Flight Center, Building 4220, Room 1103, Huntsville, AL 35812.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Hamilton, Executive Director, Aerospace Safety Advisory Panel, NASA Headquarters, Washington, DC 20546, (202) 358–1857 or *carol.j.hamilton@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Second Quarterly Meeting for 2017. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—*Updates on the Exploration Systems Development*

—*Updates on the Commercial Crew Program*

—*Updates on the International Space Station Program*

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll-free conference call number 1–800–369–1941; passcode 4539357. Attendees will be required to sign a visitor's register and to comply with NASA Marshall Space Flight Center security requirements, including the presentation of a valid picture ID and a secondary form of ID, before receiving an access badge. Due to the Real ID Act, Public Law 109–13, any attendees with driver's licenses issued from noncompliant states/territories must present a second form of ID. Noncompliant states/territories are Maine, Minnesota, Missouri, and Montana. All U.S. citizens desiring to attend the ASAP meeting at the NASA Marshall Space Flight Center must provide their full name; company affiliation (if applicable); driver's license number and state; U.S. social security number; citizenship; place of birth; and date of birth; to the Marshall Space Flight Center Protective Services and Export Control Office no later than close of business on May 17, 2017. All non-U.S. citizens must submit their full name; current address; driver's license number and state (if applicable); citizenship; company affiliation (if applicable) to include address, telephone number, and title; place of birth; date of birth; U.S. visa information to include type, number, and expiration date; U.S. social security number (if applicable); Permanent Resident (green card) number and expiration date (if applicable); place and date of entry into the U.S.; and passport information to include country of issue, number, and expiration date; to the Marshall Space Flight Center Protective Services and Export Control Office no later than close of business on May 11, 2017. If the above information is not received by the dates noted, attendees should expect a minimum delay of four (4) hours. All visitors to this meeting will be required to process in through

the Redstone Arsenal/Marshall Space Flight Center Joint Visitor Control Center located on Rideout Road, north of Gate 9, prior to entering Marshall Space Flight Center. Please provide the appropriate data via fax at (256) 544–2101, noting at the top of the page ''Public Admission to the ASAP Meeting at MSFC.'' For security questions, please call Becky Hopson at (256) 544–4541. At the beginning of the meeting, members of the public may make a verbal presentation to the Panel, limited to the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Carol Hamilton at *carol.j.hamilton@nasa.gov* or at (202) 358–1857 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Written statements should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2017–09397 Filed 5–9–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–039]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA has submitted to OMB for approval the information collections described in this notice. We invite you to comment on them.

DATES: OMB must receive written comments on or before June 9, 2017.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503; fax to 202–395–5167; or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm by phone at 301–837–1694 or by fax at 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on February 27, 2017 (82 FR 11948) and we received no comments. We have therefore submitted the described information collection to OMB for approval.

You should address one or more of the following points in any comments or suggestions you submit: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) NARA's estimate of the burden of the proposed information collection and its accuracy; (c) ways NARA could enhance the quality, utility, and clarity of the information it collects; (d) ways NARA could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether the collection affects small businesses.

In this notice, we solicit comments concerning the following information collection:

Title: Application and permit for use of space in Presidential library and grounds.

OMB Number: 3095–0024.

Agency Form Number: NA Form 16011.

Type of Review: Regular.

Affected Public: Private organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 333 hours.

Abstract: Regulations at 36 CFR 1280.94 require this information collection. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.94 and to schedule the date.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017–09418 Filed 5–9–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CAPITAL PLANNING COMMISSION

Public Comment on Draft, Updated Submission Guidelines

AGENCY: National Capital Planning Commission.

ACTION: Notice of 45 day public comment period and public meetings.

SUMMARY: The National Capital Planning Commission (NCPC or Commission) has released a draft of updated Submission Guidelines (Submission Guidelines). Federal and non-federal agency applicants whose development proposals are subject to statutory mandated Commission plan and project review must submit their proposals to the Commission following a process laid out in the Submission Guidelines. The Submission Guidelines describe the content of submissions, the submission stages, and the coordination and review process governing submissions. While the Submission Guidelines are critical to the Commission's ability to carry out its planning and review authorities, they have not been updated since October 3, 1991. As such, NCPC staff prepared recommendations to update the Submission Guidelines to ensure they are clear, consistent with agency policy and easily accessible to applicants. The proposed Guidelines accomplish three primary objectives: (1) Create clear, accessible, and efficient guidelines that are responsive to applicant needs; (2) Align NCPC's review stages and National Environmental Policy Act requirements with those of applicant agencies to save time and resources in the planning process; and (3) Allow staff to exempt from Commission review certain minor projects based on specific criteria where there is no federal interest. The draft Submission Guidelines offered for public comment are available online at *www.ncpc.gov*.

Dates and Time: The public comment period closes on June 26, 2017. Public meetings to discuss the draft submission Guidelines will be held on Tuesday, May 23, 2017 from 6:00 p.m.–7:30 p.m. and Thursday, May 25, 2017 from 9:30 a.m.–11:00 a.m. Both meetings will be held at the National Capital Planning Commission, 401 9th Street NW., Suite 500, Washington, DC 20004.

ADDRESSES: You may submit written comments on the draft Submission Guidelines by either of the methods listed below.

1. *U.S. mail, courier, or hand delivery:* Urban Design Plan Review Division/National Capital Planning Commission, 401 9th Street NW., Suite 500, Washington, DC 20004.

2. *Electronically: submission@ncpc.gov*.

FOR FURTHER INFORMATION CONTACT: Matthew Flis, Senior Urban Designer at (202) 482–7236 or *submission@ncpc.gov*.

Authority: 40 U.S.C. 8721(e)(2) and 8722(a).

Dated: May 5, 2017.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2017–09479 Filed 5–9–17; 8:45 am]

BILLING CODE 7520–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

South Carolina Electric & Gas Company; South Carolina Public Service Authority, Virgil C. Summer Nuclear Station, Units 2 and 3, Nuclear Instrumentation System Excore Detector Surface, Material Inspection Clarification

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 72 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric & Gas Company, (the licensee); for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, located in Fairfield County, South Carolina.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on April 17, 2017.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 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–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* 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. The request for the amendment and exemption was submitted by letter dated November 16, 2016 (ADAMS Accession No. ML16323A020).
- *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: Bill Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 72 to COLs, NPF–93 and NPF–94, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes to the VCSNS Units 2 and 3 Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information to clarify the Inspections, Tests, Analyses and Acceptance Criteria (ITAAC) related to the inspection of excore (source range, intermediate range, and power range) detectors.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML17045A717.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). The exemption documents for VCSNS Units 2 and 3 can be found in ADAMS under Accession Nos. ML17045A679 and ML17045A682, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML17045A665 and ML17045A677, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS Units 2 and Unit 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated November 16, 2016, the licensee requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 16–09, ''Nuclear Instrumentation System Excore Detector Surface Material Inspection Clarification.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML17045A717, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated November 16, 2016. This exemption is related to, and necessary for, the granting of License Amendment No. 72, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML17045A717), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated November 16, 2016 (ADAMS Accession No. ML16323A020), the licensee requested that the NRC amend the COLs for VCSNS, Units 2 and 3, COLs NPF–93 and NPF–94. The proposed amendment is described in Section I of this document.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on February 14, 2017 (82 FR 10590). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on November 16, 2016. The exemption and amendment were issued on April 17, 2017, as part of a combined package to the licensee (ADAMS Accession No. ML17045A616).

Dated at Rockville, Maryland, this 1st day of May 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–09457 Filed 5–9–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–409; NRC–2015–0279]

LaCrosse Solutions, LLC; Dairyland Power Cooperative; La Crosse Boiling Water Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a January 16, 2017, request from LaCrosse*Solutions,* LLC (LS), for the La Crosse Boiling Water Reactor (LACBWR), from the requirement to investigate and report to the NRC when LS does not receive notification of receipt of a shipment, or part of a shipment, of low-level radioactive waste within 20 days after transfer by rail from the LACBWR facility. LaCrosse*Solutions* requested that the time period for it to receive acknowledgement that the shipment has been received by the intended recipient be extended from 20 to 45 days to avoid an excessive administrative burden because of operational experience that indicates that rail shipments may take more than 20 days to reach their destination.

DATES: May 10, 2017.

ADDRESSES: Please refer to Docket ID NRC–2015–0279 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–2015–0279. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *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: Marlayna G. Vaaler, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3178, email: *Marlayna.Vaaler@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The La Crosse Boiling Water Reactor was an Atomic Energy Commission (AEC) Demonstration Project Reactor that first went critical in 1967, commenced commercial operation in November 1969, and was capable of producing 50 megawatts electric. The LACBWR is located on the east bank of the Mississippi River in Vernon County, Wisconsin, and is co-located with the Genoa Generating Station, which is a coal-fired electrical power plant that is still in operation. The Allis-Chalmers Company was the original licensee; the AEC later sold the plant to the Dairyland Power Cooperative (DPC) and granted it Provisional Operating License No. DPR–45 on August 28, 1973 (ADAMS Accession No. ML17080A423).

The LACBWR permanently ceased operations on April 30, 1987 (ADAMS Accession No. ML17080A422), and reactor defueling was completed on June 11, 1987 (ADAMS Accession No. ML17080A420). In a letter dated August 4, 1987 (ADAMS Accession No. ML17080A393), the NRC terminated

DPC's authority to operate the LACBWR under Provisional Operating License No. DPR–45, and granted the licensee a possess-but-not-operate status. By letter dated August 18, 1988 (ADAMS Accession No. ML17080A421), the NRC amended DPC's Provisional Operating License No. DPR–45 to Possession Only License No. DPR–45 to reflect the permanently defueled configuration at the LACBWR.

The NRC issued an order to authorize decommissioning of the LACBWR and approve the licensee's proposed Decommissioning Plan (DP) on August 7, 1991 (ADAMS Accession No. ML17080A454). Because the NRC approved DPC's DP before August 28, 1996, pursuant to section 50.82 of title 10 of the *Code of Federal Regulations* (CFR), the DP is considered the Post-Shutdown Decommissioning Activities Report (PSDAR) for the LACBWR. The PSDAR public meeting was held on May 13, 1998, and subsequent updates to the LACBWR decommissioning report have combined the DP and PSDAR into the ''LACBWR Decommissioning Plan and Post-Shutdown Decommissioning Activities Report'' (D-Plan/PSDAR). The DPC constructed an onsite Independent Spent Fuel Storage Installation (ISFSI) under its 10 CFR part 72 general license, and completed the movement of all 333 spent nuclear fuel elements from the Fuel Element Storage Well to dry cask storage at the ISFSI by September 19, 2012 (ADAMS Accession No. ML12290A027). The remaining associated buildings and structures are ready for dismantlement and decommissioning activities.

By order dated May 20, 2016 (ADAMS Accession No. ML16123A073), the NRC approved the direct transfer of Possession Only License No. DPR–45 for the LACBWR from DPC to LS, a wholly-owned subsidiary of Energy*Solutions,* LLC, and approved a conforming license amendment, pursuant to 10 CFR 50.80, ''Transfer of licenses,'' and 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit,'' to reflect the change. The order was published in the **Federal Register** on June 2, 2016 (81 FR 35383). The transfer assigns DPC's licensed possession, maintenance, and decommissioning responsibilities for the LACBWR to LS in order to implement expedited decommissioning at the LACBWR site. Decommissioning of the LACBWR is scheduled to be completed in 2018.

II. Request/Action

By letter dated January 16, 2017 (ADAMS Accession No. ML17018A136), LS requested an exemption from 10 CFR part 20, appendix G, ''Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests,'' section III.E. for the LACBWR. Section III.E requires that the shipper of any low-level radioactive waste to a land disposal facility must investigate and trace the shipment if the shipper has not received notification of the shipment's receipt by the disposal facility within 20 days after transfer. In addition, section III.E requires licensees to report such missing shipments to the NRC. Specifically, LS is requesting that the time period for LS to receive acknowledgement that the shipment has been received be extended from 20 to 45 days after transfer for rail shipments from LACBWR.

The NRC's regulations in 10 CFR 20.2301, ''Applications for exemptions,'' allow the Commission to grant exemptions from the requirements of the regulations if it determines the exemption would be authorized by law and would not result in undue hazard to life or property. Inherent to the decommissioning process, large volumes of slightly contaminated debris are generated and require disposal. The licensee transports low-level radioactive waste from LACBWR to distant locations such as the waste disposal facility operated by Energy*Solutions* in Clive, Utah, and waste processors in Texas. Experience with waste shipments from LACBWR and at other decommissioning power reactor sites indicates that rail transportation time to waste disposal facilities has, in several instances, exceeded the 20-day receipt of notification requirement. In addition, administrative processes at the disposal facility and mail delivery times could further delay the issuance or arrival of the receipt of notification.

III. Discussion

A. The Exemption Is Authorized by Law

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of regulations in 10 CFR part 20 if it determines the exemption is authorized by law and would not result in undue hazard to life or property. There are no provisions in the Atomic Energy Act of 1954, as amended (or in any other Federal statute) that impose a requirement to investigate and report on low-level radioactive waste shipments that have not been acknowledged by the recipient within 20 days of transfer. Therefore, the NRC concludes that there is no statutory prohibition on the issuance of the requested exemption and the NRC is authorized to grant the exemption by law.

With respect to compliance with Section 102(2) of the National Environmental Policy Act, 42 U.S.C. 4332(2) (NEPA), the NRC staff has determined that the proposed action, namely, the approval of the LS exemption request, is within the scope of the two categorical exclusions listed at 10 CFR 51.22(c)(25)(vi)(B) and 10 CFR 51.22(c)(25)(vi)(C). The categorical exclusion listed at 10 CFR 51.22(c)(25)(vi)(B) concerns approval of exemption requests from reporting requirements and the categorical exclusion listed at 10 CFR 51.22(c)(25)(vi)(C) concerns approval of exemption requests from inspection or surveillance requirements. Therefore, no further analysis is required under NEPA.

B. The Exemption Would Not Result in Undue Hazard to Life or Property

The NRC finds that the underlying purpose of 10 CFR part 20, appendix G, section III.E is to require licensees to investigate, trace, and report radioactive shipments that have not reached their destination, as scheduled, for unknown reasons. Data from the San Onofre Nuclear Generating Station found that rail shipments took over 16 days on average, and on occasion, took up to 57 days. The NRC acknowledges that, based on the history of low-level radioactive waste shipments from the San Onofre Nuclear Generating Station, the need to investigate and report on shipments that take longer than 20 days could result in an excessive administrative burden on the licensee. For rail shipments, LS will require electronic data tracking system interchange, or similar tracking systems that allow for monitoring the progress of the shipments by the rail carrier on a daily basis.

Because of the oversight and monitoring of radioactive waste shipments throughout the entire journey from the LACBWR to the disposal site, it is unlikely that a shipment could be lost, misdirected, or diverted without the knowledge of the carrier or LS. Furthermore, by extending the elapsed time for receipt acknowledgment to 45 days before requiring investigations, tracing, and reporting, a reasonable upper limit on shipment duration (based on historical analysis) is still maintained if a breakdown of normal tracking systems were to occur. Consequently, the NRC finds that extending the receipt of notification period from 20 to 45 days after transfer for the rail shipments described by LS in its January 16, 2017, letter would not

result in an undue hazard to life or property. The NRC also finds that the underlying purpose of 10 CFR part 20, appendix G, section III.E will be met.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the exemption is authorized by law and will not result in undue hazard to life or property. Therefore, the Commission hereby grants LaCrosse*Solutions,* LLC an exemption from 10 CFR part 20, appendix G, section III.E to extend the requirement to extend the receipt of notification period from 20 days to 45 days after transfer by rail of low-level radioactive waste from the LACBWR facility.

Dated at Rockville, Maryland, this 2nd day of May 2017.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2017–09456 Filed 5–9–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0067]

Information Collection: Licensing Requirements for Land Disposal of Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Licensing Requirements for Land Disposal of Radioactive Waste.''

DATES: Submit comments by July 10, 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–2017–0067. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0067 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0067.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML17024A191.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2017–0067 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 in comment submissions 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, and 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. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 61—Licensing Requirements for Land Disposal of Radioactive Waste.
2. *OMB approval number:* 3150–0135.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Applications for licenses are submitted as needed. Other reports are submitted annually and as other events require.
6. *Who will be required or asked to respond:* Applicants for and holders of an NRC license (to include Agreement State licensees) for land disposal of low-level radioactive waste.
7. *The estimated number of annual responses:* 16 (12 reporting responses + 4 recordkeepers).
8. *The estimated number of annual respondents:* 4.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 5,372 hours (56 hours reporting + 5,316 hours recordkeeping).

10. *Abstract:* Part 61 of title 10 of the *Code of Federal Regulations* (10 CFR), establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. The reporting and recordkeeping requirements are mandatory and, in the case of application submittals, are required to obtain a benefit. The information collected in the applications, reports, and records is evaluated by the NRC to ensure that the licensee's or applicant's disposal facility, equipment, organization, training, experience, procedures, and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 4th day of May, 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–09477 Filed 5–9–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Digital Instrumentation & Control Systems; Notice of Meeting

The ACRS Subcommittee on digital instrumentation & control systems (DI&C) will hold a meeting on May 17, 2017, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, May 17, 2017—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review the DI&C Integrated Action Plan, Rev. 1; the staff's guidance on diversity and defense-in-depth against common cause failure; and improved guidance on DI&C in existing nuclear power plants using the 10 CFR 50.59 process. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christina Antonescu (Telephone 301–415–6792 or Email: *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: May 4, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–09458 Filed 5–9–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Nuclear Waste Technical Review Board; Meeting

Board meeting: June 21, 2017—The U.S. Nuclear Waste Technical Review Board will meet in Richland, WA to discuss recent DOE research on borosilicate high-level radioactive waste glass.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the U.S. Nuclear Waste Technical Review Board will hold an open public meeting in Richland, Washington, on Wednesday, June 21, 2017, to review information on recent U.S. Department of Energy (DOE) research activities related to corrosion and long-term performance of borosilicate high-level radioactive waste (HLW) glass.

The Nuclear Waste Policy Amendments Act (NWPAA) of 1987 charges the Board with performing an ongoing and independent evaluation of the technical and scientific validity of DOE activities related to the disposition of spent nuclear fuel (SNF) and HLW.

The Board meeting will be held at the Courtyard Richland Columbia Point, 480 Columbia Point Drive, Richland, WA 99352; Tel 509–942–9400. A block of rooms has been reserved for meeting attendees at a rate of $96.00 per night. Reservations may be made by phone (1–888–236–2427, refer to group code NUCG) or online (*http://www.marriott.com/NWTRB meeting*). Reservations must be made by Monday, May 22, 2017, to ensure receiving the meeting rate. On-site parking at the hotel is complimentary.

The meeting will begin at 8:00 a.m. on Wednesday, June 21, 2017, and is scheduled to adjourn at 5:20 p.m. Speakers from U.S. national laboratories will present DOE-funded work during Fiscal Years 2015 to 2017 on HLW glass corrosion and long-term performance. Experts from other countries will provide their perspectives on the current understanding and remaining challenges in measuring and modeling glass performance. Immediately after the meeting, there will be a poster session during which scientists and engineers from universities and national

laboratories will present their research related to waste glass corrosion.

A detailed meeting agenda will be available on the Board's Web site at *www.nwtrb.gov* approximately one week before the meeting. The agenda may also be requested by email or telephone at that time from Davonya Barnes of the Board's staff.

The meeting will be open to the public, and opportunities for public comment will be provided before the lunch break and at the end of the day. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. Depending on the number of people who sign up to speak, it may be necessary to set a time limit on individual remarks. However, written comments of any length may be submitted, and all comments received in writing will be included in the record of the meeting, which will be posted on the Board's Web site after the meeting. The meeting will be webcast, and the link to the webcast will be available on the Board's Web site (*www.nwtrb.gov*) a few days before the meeting. An archived version of the webcast will be available on the Board's Web site following the meeting. The transcript of the meeting will be available on the Board's Web site no later than July 20, 2017.

The Board was established in the NWPAA as an independent federal agency in the Executive Branch to evaluate the technical and scientific validity of DOE activities related to the management and disposal of SNF and HLW and to provide objective expert advice to Congress and the Secretary of Energy on these issues. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board reports its findings, conclusions, and recommendations to Congress and the Secretary of Energy. All Board reports, correspondence, congressional testimony, and meeting transcripts and related materials are posted on the Board's Web site.

For information on the meeting agenda, contact Roberto Pabalan: *pabalangnwtrb.gov* or Karyn Severson: *seversongnwtrb.gov.* For information on lodging or logistics, contact Eva Moore: *mooreinwtrb.gov*. To request copies of the meeting agenda or the transcript, contact Davonya Barnes: *bames@nwtrb.gov*. All four can be reached by mail at 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201–3367; by telephone at 703–235–4473; or by fax at 703–235–4495.

Dated: May 2, 2017.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2017–09344 Filed 5–9–17; 8:45 am]

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PEACE CORPS

Information Collection Request Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before July 10, 2017.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Questionnaire for Peace Corps Volunteer Background Investigation.

OMB Control Number: 0420–0001.

Type of Request: Review/Re-approve.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Potential and current volunteers.

Burden to the Public:

Estimated Burden (Hours) of the Collection of Information:

a. *Number of respondents:* 5,000.

b. *Frequency of response:* One time.

c. *Completion time:* 2 minutes.

d. *Annual burden hours:* 167 hours.

General Description of Collection: The Office of Volunteer Recruitment and Selection uses the Questionnaire for Peace Corps Volunteer Background Investigation form (BI form) as authorization from the invited Peace Corps Volunteer applicant to conduct a background check through the Office of Personnel Management (OPM) or other contract background investigator of pertinent records pertaining to applicants' interactions with the judicial system, qualifications, eligibility and suitability for Peace Corps volunteer service.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on May 4, 2017.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2017–09428 Filed 5–9–17; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2014–1; MC2017–127 and CP2017–180; MC2017–128 and CP2017–181]

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 negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 12, 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:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the

Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's 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).:* CP2014–1; *Filing Title:* Notice of United States Postal Service of Amendment to Parcel Select and Parcel Return Service Contract 5; *Filing Acceptance Date:* May 4, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* May 12, 2017.

2. *Docket No(s).:* MC2017–127 and CP2017–180; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 315 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* May 4, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* May 12, 2017.

3. *Docket No(s).:* MC2017–128 and CP2017–181; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 316 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* May 4, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* May 12, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–09445 Filed 5–9–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80598; File No. SR–DTC–2017–001]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of Proposed Rule Change To Establish a Sub-Account for Use With the DTCC Euroclear Global Collateral Ltd Collateral Management Service and Provide for the Authorization of a Representative To Receive Information About the Sub-Account

May 4, 2017.

On March 9, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2017–001 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on March 24, 2017.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change consists of amendments to the Rules, By-Laws and Organization Certificate of The Depository Trust Company (''DTC Rules'')[4] in order to add new Rule 35 (CMS Reporting). The proposed rule would provide that any DTC participant that is, or is acting on behalf of, a user of certain collateral management services (''CMS'')[5] of DTCC Euroclear Global Collateral Ltd. (''DEGCL'')[6] may establish one or more sub-Accounts at DTC in connection with CMS (each, a ''CMS Sub-Account''). A DTC participant that establishes a CMS Sub-Account pursuant to the proposed rule (''CMS Participant'') would thereby: (i) Authorize DEGCL to receive account and transactional information and reports with respect to the CMS Sub-Account, and (ii) direct DTC to provide such information and reports to DEGCL, as described below.

A. DEGCL Background

DTC states that DEGCL performs information and record-keeping services for CMS users that have entered into user agreements with DEGCL for this purpose (''CMS Users'').[7] CMS Users are financial institutions that are counterparties to agreements establishing obligations between them to provide securities collateral with respect to swaps or other types of financing transactions.[8] These bilateral swap or other financing agreements are entered into by such counterparties outside and independent of DEGCL or DTC.[9]

This proposed rule change relates to one of the services that DEGCL proposes to offer, the DEGCL ''Allocation Option'' (also referred to as ''auto-select''). DTC states that the Allocation Option would only be used with DTC eligible securities held in a CMS Sub-Account by a CMS Participant (''CMS

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80280 (March 20, 2017), 82 FR 15081 (March 24, 2017) (SR–DTC–2017–001) (''Notice'').

[4] *Available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[5] In particular, there would be a CMS option authorizing DEGCL, on behalf of the CMS User, to propose collateral allocations to satisfy counterparty obligations of the CMS User, referred to by DEGCL as the ''Allocation Option'' and further explained below.

[6] DEGCL is a joint venture of The Depository Trust & Clearing Corporation (''DTCC''), the corporate parent of DTC, and Euroclear S.A./N.V. (''Euroclear''), the corporate parent of Euroclear Bank, described further below. DTC understands that CMS will be operated by Euroclear Bank and other entities in the Euroclear group, as service providers to DEGCL, in accordance with appropriate agreements between them.

[7] *Notice,* 82 FR at 15082.

[8] *Id.*

[9] DTC states that a CMS User will typically be a major financial institution or buy-side investor that is a bank, broker dealer, or investment company. CMS Users will enter into a Collateral Management Service Agreement with DEGCL, which includes general terms of conditions and operating procedures (''CMS Agreement''). *Id.*

Securities'').[10] The Allocation Option is dependent on DEGCL receiving certain information from DTC for the applicable CMS Sub-Account of the applicable CMS Participant.[11] The proposed rule change would provide a mechanism for a CMS Participant to authorize DEGCL as the CMS Participant's ''CMS Representative'' to receive the necessary information from DTC, and to direct DTC to provide DEGCL with that information, as described below.

B. The Proposed Rule Change

The proposed rule change would allow a CMS Participant to establish one or more CMS Sub-Accounts. Upon doing so, a CMS Participant would be able to instruct DTC to transfer securities to the CMS Participant's CMS Sub-Account. Such securities (*i.e.,* CMS Securities) would then be available for allocation by DEGCL for delivery or pledge by book-entry at DTC in accordance with DTC Rules and Procedures (including risk management controls),[12] in satisfaction of the various collateral obligations of the CMS Participant or the CMS User on behalf of which the CMS Participant is acting.[13]

By establishing a CMS Sub-Account, a CMS Participant would be (i) authorizing DEGCL, as its CMS Representative, to receive in report form, the information defined below regarding CMS Securities credited to the CMS Sub-Account at the time of the report (''CMS Report''), and regarding any delivery or pledge from, or delivery or release to, the CMS Sub-Account (''CMS Delivery Information'');[14] (ii) representing and warranting that it is duly authorized to instruct DTC to provide the CMS Reports and CMS Delivery Information about such CMS Sub-Account to DEGCL; (iii) directing DTC to provide the CMS Reports and CMS Delivery Information to DEGCL;[15] and (iv) representing and warranting that it would conduct business in such CMS Sub-Account as provided in proposed Rule 35, and otherwise pursuant to the DTC Rules and Procedures, and in compliance with applicable law.

The CMS Report would include, with respect to the CMS Securities credited to a CMS Sub-Account of such CMS Participant at the time of such report, (i) the Committee on Uniform Securities Identification Procedures (''CUSIP'') number, International Securities Identification Number (''ISIN''), or other identification number of the CMS Securities; and (ii) the number of shares or other units or principal amount of the CMS Securities. CMS Delivery Information would be provided in real time, and would include, with respect to each delivery or pledge of CMS Securities from, or delivery or release of CMS Securities to a CMS Sub-Account, a copy of any delivery, pledge, or release message with respect to the CMS Sub-Account, including (i) the CUSIP, ISIN, or other identification number of such CMS Securities, and (ii) the number of shares or other units or principal amount of such CMS Securities.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[16] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with the Act, specifically Section 17A(b)(3)(F) of the Act and Rule 17Ad–22(e)(20) under the Act, as discussed below.[17]

A. Consistency With Section 17A

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[18] As described above, the proposed rule change would permit a CMS Participant (*i.e.,* a DTC participant acting for itself or on behalf of a CMS User) to establish a CMS Sub-Account at DTC. Securities transferred to the CMS Sub-Account would then be available for allocation by DEGCL, via DTC, to satisfy various collateral obligations through the DEGCL Allocation Option. By monitoring transactions of a CMS User with multiple counterparties, the Allocation Option could offer efficiency by automating the selection of appropriate securities collateral to satisfy applicable collateral obligations. The proposed rule change could allow CMS Participants to avail themselves of the efficiency of the Allocation Option, such as not needing to transmit delivery and position information to DEGCL, by providing a mechanism for DTC to provide information on behalf of CMS Participants to DEGCL. Therefore, the Commission believes that the proposed rule change could help streamline the settlement of collateral transactions, thereby promoting the prompt and accurate clearance and settlement, consistent Section 17A(b)(3)(F), cited above.

B. Consistency With Rule 17Ad–22(e)(20)

Rule 17Ad–22(e)(20) under the Act requires a clearing agency, such as DTC, to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link DTC establishes with one or more other clearing agencies, financial market utilities, or trading markets.[19] In developing the proposed rule change, DTC states that it evaluated the risks that could arise by establishing a link with DEGCL.[20] In particular, DTC identified the risk of data error from the communication link or the external communication of a CMS Participant's proprietary information.[21] DTC determined that the identified risks could be mitigated because (i) the

[10] *Id.*

[11] The CMS Participant may be a CMS User acting for itself or a DTC participant acting on behalf of a CMS User as the CMS Participant. *Id.*

[12] DTC states that its risk management controls, including Collateral Monitor and Net Debit Cap (as defined in Rule 1, Section 1 of the DTC Rules, supra note 4), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest participant or affiliated family of participants. The Collateral Monitor tests whether a DTC participant has sufficient collateral for DTC to pledge or liquidate if that participant were to fail to meet its settlement obligation. *Id.* Pursuant to these controls under applicable DTC Rules and Procedures, any delivery instruction order to a CMS Sub-Account that would cause the CMS Participant to exceed its Net Debit Cap or to have insufficient DTC Collateral to secure its obligations to DTC, would not be processed by DTC. *Id.* Deliveries would be processed in the same order and with the same priority as otherwise provided in the DTC Rules and Procedures, *i.e.,* such deliveries would not take precedence over any other type of delivery in the DTC system. *Id.*

[13] *Id.* at 15082–83.

[14] Each CMS Participant would continue to be liable as principal for the actions of its CMS Representative and would indemnify DTC against any claim or loss arising from any act or omission of its CMS Representative, or arising from DTC's provision of the CMS Report and CMS Delivery Information to DEGCL or the receipt and use thereof by DEGCL, except to the extent caused directly by DTC's gross negligence or willful misconduct. *Id.* at 15083.

[15] The CMS Report and CMS Delivery Information would be transmitted to DEGCL using DTCC's existing Common Data Transfer Service (''CDTS'') over a dedicated BT Radianz link. *See* CDTS User Guide and Schemas, *available at http://www.dtcc.com/~/media/Files/Downloads/Settlement-Asset-Services/Underwriting/CDTS.zip.* BT Radianz is an existing DTCC network service provider. CDTS is DTCC's proprietary file input and output management system. *Id.* It enables DTCC to securely and reliably automate the exchange of files over a network link with its Participants, Members, and third-parties. *Id.*

[16] 15 U.S.C. 78s(b)(2)(C).

[17] 15 U.S.C. 78q–1(b)(3)(F); 17 CFR 240.17Ad–22(20).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(20).

[20] *Notice,* 82 FR at 15084.

[21] *Id.*

Allocation Option would not require any material change to DTC's settlement framework, technology, or operating procedures including existing settlement cycles and risk management controls; (ii) DTCC's Technology Risk Management existing control procedures could manage data integrity and authorization provisioning to mitigate information and technology risk; and (iii) DEGCL is only receiving CMS Reports and CMS Delivery Information from a CMS Sub-Account specifically designated for this purpose by a CMS Participant.[22] Therefore, the Commission believes that DTC has sought to identify, monitor, and manage the relevant risks associated with the proposed rule change, consistent with Rule 17Ad–22(e)(20), cited above.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act[23] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2017–001 be, and hereby is, *approved*.[24]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09426 Filed 5–9–17; 8:45 am]

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[22] *Id.*

[23] 15 U.S.C. 78q–1.

[24] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80591; File No. SR–NASDAQ–2017–025]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 3 and 4, To List and Trade Shares of the Hartford Global Impact NextShares™ Fund Under Nasdaq Rule 5745

May 4, 2017.

I. Introduction

On March 1, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade common shares (''Shares'') of the Hartford Global Impact NextShares™ Fund (''Fund'') under Nasdaq Rule 5745. The proposed rule change was published for comment in the **Federal Register** on March 20, 2017.[3] On April 13, 2017, the Exchange filed Amendment No. 3 to the proposed rule change and, on May 3, 2017, the Exchange filed Amendment No. 4 to the proposed rule change.[4] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 3 and 4.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5745, which governs the listing and trading of Exchange-Traded Managed Fund Shares, as defined in Nasdaq Rule 5745(c)(1). The Fund is a series of Hartford Funds NextShares Trust (''Trust'').[5] The Exchange represents that the Trust will be registered with the Commission as an open-end investment company and that it has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6]

Hartford Funds Management Company, LLC (''Adviser'') will be the adviser to the Fund and Wellington Management Company LLP will the sub-adviser to the Fund (''Sub-Adviser''). ALPS Distributors, Inc. will be the principal underwriter and distributor of the Fund's Shares. Hartford Funds Management Company, LLC will act as the administrator and accounting agent to the Fund. State Street Bank and Trust Company will act as sub-administrator, sub-accounting agent, transfer agent, and custodian to the Fund.

The Exchange has made the following representations and statements in describing the Fund.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80237 (March 14, 2017), 82 FR 14395 (''Notice'').

[4] On April 4, 2017, the Exchange filed Amendment No. 1 to the proposed rule change and, on April 18, 2017, the Exchange withdrew Amendment No. 1. On April 12, 2017, the Exchange filed Amendment No. 2 to the proposed rule change and, on April 13, 2017, the Exchange withdrew Amendment No. 2. Amendment No. 3 to the proposed rule change replaces and supersedes the original filing in its entirety. In Amendment No. 3, the Exchange: (a) Represents that neither the Adviser nor the Sub-Adviser (as defined herein) is a registered broker-dealer; however, it represents that each of the Adviser and the Sub-Adviser is affiliated with a broker-dealer, and each of the Adviser and the Sub-Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of, and/or changes to, the Fund's portfolio; (b) represents that personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio; (c) represents that, in the event that the Adviser or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or any new adviser or a sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, such new adviser or sub-adviser will implement and maintain 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, and/or changes to, the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio; (d) provides additional detail regarding the investments and operation of the Fund and the Master Portfolio (as defined herein); (e) clarifies the public Web sites on which certain information about the Fund would be available; (f) modifies the continued listing representations to conform to Nasdaq rules; and (g) makes other technical, non-substantive corrections in the proposed rule change. Amendment No. 3 is available at: *https://www.sec.gov/comments/sr-nasdaq-2017-025/nasdaq2017025-1701702-149977.pdf.* Amendment No. 4 to the proposed rule change is a partial amendment in which the Exchange clarifies that the Reporting Authority (as defined in Nasdaq Rule 5745) will implement and maintain, or ensure that the Composition File (as defined in Nasdaq Rule 5745) will be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio positions and changes in the positions. Because Amendment Nos. 3 and 4 to the proposed rule change do not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment Nos. 3 and 4 are not subject to notice and comment.

[5] According to the Exchange, the Commission has issued an order granting the Trust and certain affiliates of the Trust exemptive relief under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 31607 (May 19, 2015) (File No. 812–14439). The Exchange represents that, in compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Trust will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended.

[6] *See* Registration Statement on Form N–1A for the Trust dated November 30, 2016 (File Nos. 333–214842 and 811–23215).

[7] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (''NAV''), fees, distributions, and taxes, among other things, can be found in the Notice, Amendment Nos. 3 and 4, and Registration Statement, as applicable. *See supra* notes 3, 4, and 6, respectively, and accompanying text.

A. Principal Investment Strategy of the Hartford Global Impact NextShares™ Fund

According to the Exchange, the Fund will be actively managed and will pursue the investment strategy described below.[8]

The investment objective of the Fund is long-term capital appreciation. The Fund seeks to achieve its objective by investing all of its assets in shares of the Global Impact Master Portfolio (''Master Portfolio;'' and references to the ''Fund'' include, where applicable, the Master Portfolio), which has the same investment objective and strategy as the Fund. The Fund invests in equity securities of issuers located throughout the world, including non-dollar securities and securities of emerging market issuers. The Fund's Sub-Adviser specifically seeks to invest the Fund's assets in companies that focus their operations in areas that the Sub-Adviser believes are likely to address major social and environmental challenges including, but not limited to, hunger, health, clean water and sanitation, affordable housing, education and training, financial inclusion, narrowing the digital divide, alternative energy, resource stewardship and resource efficiency. The Fund may invest in companies of any market capitalization, including small capitalization securities, located anywhere in the world, although the Fund will not normally invest more than 33% of its assets in issuers that conduct their principal business activities in emerging markets or whose securities are traded principally on exchanges in emerging markets.

The Fund may also invest in depositary receipts or other securities that are convertible into securities of foreign issuers and could, at times, hold a portion of its assets in cash. Under normal circumstances, at least 40% (and normally not less than 30%) of the Fund's net assets will be invested in or exposed to foreign securities or derivative instruments with exposure to foreign securities of at least three different countries outside the United States.[9]

The Fund will operate as a ''feeder fund,'' which means it will invest all of its assets in another investment company (the Master Portfolio). The Master Portfolio is a series of the Hartford Funds Master Trust, a Delaware statutory trust. The Adviser and the Sub-Adviser are also the Adviser and Sub-Adviser, respectively, of the Master Portfolio. The Fund has the same investment objective and limitations as the Master Portfolio in which it invests. The Fund does not buy investment securities directly. The Master Portfolio, on the other hand, invests directly in portfolio securities. According to the Exchange, use of the master/feeder structure enables the Fund to pool its assets with other investors in the Master Portfolio, if any, which may result in efficiencies in portfolio management and administration that could lower Fund costs and enhance shareholder returns.

B. Portfolio Disclosure and Composition File

Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of current Fund portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. The Fund may provide more frequent disclosures of portfolio positions at its discretion.

As defined in Nasdaq Rule 5745(c)(3), the ''Composition File'' is the specified portfolio of securities and/or cash that the Fund will accept as a deposit in issuing a creation unit of Shares, and the specified portfolio of securities and/or cash that the Fund will deliver in a redemption of a creation unit of Shares. The Composition File will be disseminated through the National Securities Clearing Corporation once each business day before the open of trading in Shares on that day and also will be made available to the public each day on a free Web site.[10] Because the Fund seeks to preserve the confidentiality of its current portfolio trading program, the Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of the Fund, but the Composition File generally will not include all of the securities in the Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser or the Sub-Adviser is in the process of acquiring for the Fund generally will not be represented in the Fund's Composition File until their purchase has been completed. Similarly, securities that are held in the Fund's portfolio but are in the process of being sold may not be removed from its Composition File until the sale is substantially completed. To the extent that the Fund creates or redeems Shares in-kind, it will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that creation units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in which case it will not include any of the securities in the Fund's portfolio.[11]

C. Intraday Indicative Value

An estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the ''Intraday Indicative Value'' (''IIV'') will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session [12] when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service. The IIV will be based on current information regarding the value of the securities and other assets held by the Fund.[13] The purpose of the IIV is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount.[14]

[8] According to the Exchange, additional information regarding the Fund will be available on the free public Web site for the Fund at *www.hartfordfunds.com* (which may contain links for certain information to *www.nextshares.com*).

[9] According to the Exchange, investments are deemed to be ''foreign'' if: (a) An issuer's domicile or location of headquarters is in a foreign country; (b) an issuer derives a significant proportion (at least 50%) of its revenues or profits from goods produced or sold, investments made, or services performed in a foreign country or has at least 50% of its assets situated in a foreign country; (c) the principal trading market for a security is located in a foreign country; or (d) it is a foreign currency. According to the Exchange, the Fund's investments in derivative securities, exchange traded funds, and exchange traded notes will be considered to be ''foreign'' if the underlying assets represented by the investment are determined to be foreign using the foregoing criteria.

[10] The Exchange represents that the free Web site containing the Composition File will be *www.nextshares.com.*

[11] In determining whether the Fund will issue or redeem creation units entirely on a cash basis, the key consideration will be the benefit that would accrue to the Fund and its investors.

[12] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m. Eastern Time (''E.T.''); (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m. E.T.).

[13] IIVs disseminated throughout each trading day would be based on the same portfolio as used to calculate that day's NAV. The Fund will reflect purchases and sales of portfolio positions in its NAV the next business day after trades are executed.

[14] In NAV-Based Trading, described herein, prices of executed trades are not determined until the reference NAV is calculated, so buyers and sellers of Shares during the trading day will not know the final value of their purchases and sales until the end of the trading day. The Exchange represents that the Fund's Registration Statement, Web site,

D. NAV-Based Trading

Because Shares will be listed and traded on the Exchange, Shares will be available for purchase and sale on an intraday basis. Shares will be purchased and sold in the secondary market at prices directly linked to the Fund's next-determined NAV using a trading protocol called ''NAV-Based Trading.'' All bids, offers, and execution prices of Shares will be expressed as a premium/discount (which may be zero) to the Fund's next-determined NAV (*e.g.,* NAV − $0.01, NAV + $0.01).[15] The Fund's NAV will be determined each business day, normally as of 4:00 p.m. E.T. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV. Nasdaq represents that all Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which will indicate that the Shares are traded using NAV-Based Trading.

According to the Exchange, member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.[16] In the systems used to transmit and process transactions in Shares, the Fund's next-determined NAV will be represented by a proxy price (*e.g.,* 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (*e.g.,* NAV − $0.01 would be represented as 99.99; NAV + $0.01 as 100.01).

To avoid potential investor confusion, Nasdaq represents that it will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers, and execution prices of Shares that are made available to the investing public follow the ''NAV − $0.01/NAV + $0.01'' (or similar) display format. Specifically, the Exchange will use the NASDAQ Basic and NASDAQ Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the ''NAV − $0.01/NAV + $0.01'' (or similar) display format. Member firms may use the NASDAQ Basic and NASDAQ Last Sale data feeds to source intraday Share prices for presentation to the investing public in the ''NAV − $0.01/NAV + $0.01'' (or similar) display format. Alternatively, member firms could source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (*e.g.,* Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the ''NAV − $0.01/NAV + $0.01'' (or similar) display format. Prior to the commencement of trading in the Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Shares will be subject to Rule 5745, which sets forth the initial and continued listing criteria applicable to Exchange-Traded Managed Fund Shares. A minimum of 50,000 Shares and no less than two creation units of the Fund will be outstanding at the commencement of trading on the Exchange.

Nasdaq 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. Every order to trade Shares of the Fund is subject to the proxy price protection threshold of plus/minus $1.00, which determines the lower and upper thresholds for the life of the order and provides that the order will be canceled at any point if it exceeds $101.00 or falls below $99.00.[19] With certain exceptions, each order also must contain the applicable order attributes, including routing instructions and time-in-force information, as described in Nasdaq Rule 4703.[20]

Nasdaq also represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority, Inc. (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[21] The Exchange represents that its surveillance procedures are adequate to properly monitor trading of Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed with, and may obtain information from, other markets and entities that are members of the Intermarket Surveillance Group (''ISG'')[22] regarding trading in the Shares, and in exchange-traded securities and instruments held by the Fund (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of the Fund's portfolio holdings). In addition, the Exchange may obtain information regarding trading in the Shares, and in exchange-traded securities and instruments held by the Fund (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of the

and any advertising or marketing materials will include prominent disclosure of this fact. The Exchange states that, although IIVs may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

[15] According to the Exchange, the premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees and other costs in connection with creating and redeeming creation units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading.

[16] According to the Exchange, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically canceled as of the close of trading on that day. Prior to the commencement of trading in the Fund, the Exchange will inform its members in an Information Circular of the effect of this characteristic on existing order types.

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Nasdaq Rule 5745(h).

[20] *See* Nasdaq Rule 5745(b)(6).

[21] The Exchange states that FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[22] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Fund's portfolio holdings), from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Prior to the commencement of trading in the Fund, 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: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the IIV and Composition File is disseminated; (d) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (e) information regarding NAV-Based Trading protocols.

The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained. As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically canceled as of the close of trading on that day, and the Information Circular will discuss the effect of this characteristic on existing order types. In addition, Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trading Alert issued prior to the commencement of trading in Shares on the Exchange.

Nasdaq states that neither the Adviser nor the Sub-Adviser is a registered broker-dealer; however, each of the Adviser and the Sub-Adviser is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of, and/or changes to, the Fund's portfolio.[23] The Reporting Authority[24] will implement and maintain, or ensure that the Composition File will be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio positions and changes in the positions.[25] In the event that (a) the Adviser or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, such new adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as the case may be, regarding access to information concerning the composition of, and/or changes to, the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.[26]

The Commission 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,[27] which sets forth Congress' finding 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. Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services. All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape[28] and separately disseminated to member firms and market data services through the Exchange data feeds.

Once the Fund's daily NAV has been calculated and disseminated, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via a File Transfer Protocol (''FTP'') file[29] that will be created for exchange-traded managed funds and will be confirmed to the member firms participating in the trade to supplement the previously provided information with final pricing.

The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each day that the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual Fund Quotation Service (''MFQS'') by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the value to market participants and market data vendors via the Mutual Fund Dissemination Service so that all firms will receive the NAV per share at the same time.

The Exchange further represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in Shares. Nasdaq will halt trading in Shares under the conditions specified in Nasdaq Rule 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist that, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading.

Prior to the commencement of market trading in Shares, the Fund will be required to establish and maintain a public Web site through which its current prospectus may be

[23] *See* Amendment No. 3, *supra* note 4. 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, Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has: (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. *See* Amendment No. 3, *supra* note 4, at note 9.

[24] *See* Nasdaq Rule 5745(c)(4).

[25] *See* Amendment No. 4, *supra* note 4.

[26] *See* Amendment No. 3, *supra* note 4.

[27] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[28] Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. Nasdaq has represented that it will separately report real-time execution prices and quotes to member firms and providers of market data services in the ''NAV − $0.01/NAV + $0.01'' (or similar) display format, and will otherwise seek to ensure that representations of intraday bids, offers, and execution prices for Shares that are made available to the investing public follow the same display format.

[29] According to Nasdaq, FTP is a standard network protocol used to transfer computer files on the Internet. Nasdaq will arrange for the daily dissemination of an FTP file with executed Share trades to member firms and market data services.

downloaded.[30] The Web site will include (directly or through a link to *www.nextshares.com*) additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for that business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average, and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV (''Closing Bid/Ask Midpoint''); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (''Closing Bid/Ask Spread.'').[31] The Web site will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time.

The Exchange represents that all statements and representations made in the filing regarding: (a) The description of the Fund's portfolio, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or IIVs, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the 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.[32] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rules 5800, *et seq.*

This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice, and Amendment Nos. 3 and 4,[33] and the Exchange's description of the Fund. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5745 and the conditions set forth in this proposed rule change to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 3 and 4, is consistent with Section 6(b)(5)[34] and Section 11A(a)(1)(C)(iii) of the Act[35] 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,[36] that the proposed rule change (SR–NASDAQ–2017–025), as modified by Amendment Nos. 3 and 4, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Eduardo A. Aleman,

Assistant Secretary.

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[30] The Exchange represents that the Web site containing this information will be *www.hartfordfunds.com.*

[31] The Exchange represents that the Web site containing the Fund's NAV will be *www.hartfordfunds.com* and that all other information listed will be made available on *www.nextshares.com,* which can be accessed directly and via a link on *www.hartfordfunds.com.*

[32] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR–BATS–2015–100). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[33] *See supra* notes 3 and 4.

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80590; File No. SR–NYSEMKT–2017–01]

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Equity Trading Rules To Transition Trading on the Exchange From a Floor-Based Market With a Parity Allocation Model to a Fully Automated Market With a Price-Time Priority Model on the Exchange's New Trading Technology Platform, Pillar

May 4, 2017.

I. Introduction

On January 25, 2017, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt new equity trading rules to transition trading on the Exchange from a floor-based market with a parity-allocation model to a fully automated market with price-time-priority allocation model on the Exchange's new trading technology platform, Pillar. The proposed rule change was published for comment in the **Federal Register** on February 15, 2017.[3] On March 29, 2017, the Commission designated a longer period for action on the proposed rule change.[4] On April 24, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission received no comments on the proposal. The Commission is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis and soliciting comments on Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to adopt new equities trading rules to facilitate the transition to Pillar, a new trading-technology platform, in order to operate as a fully-automated cash equities market. As part of this transition, the Exchange would move from the current floor-based market with a parity-allocation model to a fully automated market with a price-time-priority allocation model. Consequently,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79993 (Feb. 9, 2017), 82 FR 10814 (Feb. 15, 2017) (''Notice'').

[4] *See* Securities Exchange Act Release No. 80337 (Mar. 29, 2017), 82 FR 16459 (Apr. 4, 2017).

[5] In Amendment No. 1, the Exchange proposes to: (1) Amend proposed Exchange Rule 7.35E(a)(10)(A) to specify the ''Auction Collar'' as the greater of $0.50 or 10% away from the Auction Reference Price and delete the specified percentages to conform to rule filing SR–NYSEArca–2016–130; (2) amend proposed Exchange Rule 7.35E(d)(2) to note that the Closing Auction Imbalance Freeze will begin ten minutes (rather than one minute) before the schedule time for the Closing Auction; (3) amend proposed Exchange Rule 7.35E(f)(2) to reject certain orders until after the Auction Processing Period for the IPO Auction has concluded; (4) amend proposed Exchange Rule 7.35E(h)(3)(A) and (B) to define ''previously-live orders'' for Core Open Auction, Trading Halt Auction, Closing Auction, and IPO Auction, and how unexecuted orders would be processed, when the Exchange transitions from continuous trading from a prior trading session; (5) amend proposed Exchange rule 7.31E(h)(3)(A) to specify that Discretionary Pegged Orders do not participate in any auctions; (6) amend proposed Exchange Rule 7.34E(c)(1)(A) to add that Discretionary Pegged Orders may not be entered before or during the Early Trading Session; (7) amend proposed Exchange Rule 7.46E to reflect recent changes to publication dates with respect to the Tick Size Pilot Plan; and (8) state that the Pillar transition is anticipated to occur in the third quarter of 2017. The Exchange represents that most of the amendments relate to a recent proposed rule change (SR–NYSEArca–2017–47) by NYSE Arca, Inc. (''NYSE Arca'').

Exchange floor-based designated market makers (''DMMs'') would be replaced by Electronic DMMs, and the Exchange would no longer support Supplemental Liquidity Providers or floor brokers as a separate class of participant on the Exchange.[6]

The Exchange represents that the proposal is based on the trading rules of the NYSE Arca Equities exchange (''NYSE Arca Equities'') and current Exchange equities rules. NYSE Arca Equities already uses Pillar, the same trading technology platform that the Exchange proposes to adopt.[7] The Exchange proposes to adopt Exchange Rules 1E, 2E, 3E, 6E, 7E, 12E, and 13E to cover cash equities trading on the Pillar platform.[8] Exchange Rule 1E would cover definitions. Exchange Rule 2E would cover equity trading permits. Exchange Rule 3E would cover organization and administration of the Exchange. Exchange Rule 6E would cover business conduct. Exchange Rule 7E would cover equities trading. Exchange Rule 12E would cover arbitration. Exchange Rule 13E would cover liability of directors and the Exchange.

The Exchange would announce the transition of its cash equities trading to Pillar, if approved by the Commission, by a Trader Update. The Exchange anticipates that the transition would occur in the third quarter of 2017. If the Exchange transitions to Pillar trading platform, the Exchange would no longer trade on its current floor-based platform, and current Exchange equities rules governing the floor-based platform would no longer be applicable. The Exchange proposes to mark the affected Exchange rules with a preamble to state that these rules would no longer be in effect and represents that it will subsequently file a separate proposed rule change to delete rules no longer applicable.

A detailed description of the proposal appears in the Notice. The proposal is summarized and discussed below.

A. Exchange Rule 1E—Definitions

The Exchange proposes 12 new definitions to be used with the Pillar trading platform. The Exchange represents that most of the proposed definitions are based on the rules of NYSE Arca Equities. First, the Exchange proposes to define the term ''Exchange Book'' as the Exchange's electronic file of orders.[9] Second, the Exchange proposes to define ''Authorized Trader'' as a person who may submit orders to the Exchange's cash equity Trading Facilities on behalf of his or her ETP Holder.[10] Third, the Exchange proposes to define ''Core Trading Hours'' as the hours of 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time, or such other hours as may be determined by the Exchange from time to time.[11] Fourth, the Exchange proposes to define the term ''Exchange'' as NYSE MKT LLC.[12] Fifth, the Exchange proposes to define the term ''ETP'' as an Equity Trading Permit issued by the Exchange to a registered broker or dealer approved by the Exchange as a member organization.[13]

The Exchange proposes to define the term ''ETP Holder'' as a member organization that has been issued an ETP.[14] The Exchange proposes to define the term ''General Authorized Trader'' as an Authorized Trader who performs only non-market making activities on behalf an ETP Holder.[15] The Exchange proposes to define the term ''Marketable'' to mean, for a limit order, that the order that can be immediately executed or routed.[16]

The Exchange proposes to define the term ''Official Closing Price'' as the reference price to determine the closing price in a security.[17] The Exchange proposes to define the term ''Security'' to mean any security defined in Rule 3(a)(10) under the Act and, for purposes of proposed Rule 7E, to mean any NMS stock.[18] The Exchange proposes to define the term ''Self-Regulatory Organization ('SRO')'' as defined in the provisions of the Act relating to national securities exchanges.[19] Finally, the Exchange proposes to define the term ''Trading Facilities'' as any and all electronic or automatic trading systems provided by the Exchange to ETP Holders.[20]

B. Exchange Rule 2E—Equity Trading Permits

The Exchange proposes to adopt rules related to equity trading permits on the Exchange, including procedures, qualifications, fees, and employees of ETP Holders. Exchange member organizations who want to trade on Pillar would need to obtain an ETP.[21]

The Exchange proposes that it may, under certain conditions, deny an ETP or condition trading privileges under an ETP.[22] The Exchange represents that these conditions are identical to NYSE Arca Equities Rule 2.4(a) and (b). Additionally, the Exchange proposes that traders of ETP Holders for which the Exchange is the Designated Examining Authority must successfully complete the Series 7 examination.[23] The Exchange represents that these requirements are identical to those in the NYSE Arca Equities rules.

Proposed Exchange Rule 2.6E would specify that the issuance of an ETP constitutes a revocable privilege and confers on its holder no right or interest of any nature to continue as an ETP Holder.[24] The Exchange represents that this rule is identical to NYSE Arca

[6] The Exchange would also expand unlisted trading privileges to all NMS Securities, including securities listed on the New York Stock Exchange LLC, NYSE Arca, the Nasdaq Stock Market LLC (''Nasdaq''), and Bats BZX Exchange, Inc. *See* Securities Exchange Act Release Nos. 79400 (Nov. 25, 2016), 81 FR 86750 (Dec. 1, 2016); 79738 (Jan. 4, 2017), 82 FR 3068 (Jan. 10, 2017); and 80097 (Feb. 24, 2017), 82 FR 12251 (Mar. 1, 2017).

[7] NYSE Arca filed four proposals to implement Pillar in stages: (1) Adopting rules for trading sessions, order ranking and display, and order execution; (2) adopting rules for orders and modifiers and the retail liquidity program; (3) adopting rules for trading halts, short sales, limit up-limit down, and odd lots and mixed lots; and (4) adopting rules for auctions. *See* Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR–NYSEArca–2015–38) (first Pillar filing and approval); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (SR–NYSEArca–2015–56) (second Pillar filing and approval); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (third Pillar filing and approval); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) and 76869 (Jan. 11, 2016), 81 FR 2276 (Jan. 15, 2016) (fourth Pillar filing and approval).

[8] The Exchange previously adopted these rules, generally with rule text reserved for future use, in anticipation of the current proposal. *See* Securities Exchange Act Release No. 79242 (Nov. 4, 2016), 81 FR 79081 (Nov. 10, 2016) (SR–NYSEMKT–2016–97). The rule numbers for the rules being adopted by NYSE MKT correspond with the rule numbers of NYSE Arca Equities rules.

[9] *See* Proposed Exchange Rule 1.1E (a) and NYSE Arca Equities Rule 1.1(a). The proposed rule does not contain the phrase ''which contains all orders entered on the NYSE Arca Marketplace'' from the NYSE Arca rule.

[10] *See* Proposed Exchange Rule 1.1E (g).

[11] *See* Proposed Exchange Rule 1.1E (j).

[12] *See* Proposed Exchange Rule 1.1E (k).

[13] *See* Proposed Exchange Rule 1.1E (m).

[14] *See* Proposed Exchange Rule 1.1E (n).

[15] *See* Proposed Exchange Rule 1.1E (p).

[16] *See* Proposed Exchange Rule 1.1E (u). The Exchange proposes that it will always consider a market order as Marketable.

[17] *See* Proposed Exchange Rule 1.1E (gg). The proposed rule provides detailed procedures for the determination of the official closing price. According to the Exchange, proposed Rule 1.1E (gg), together with proposed Exchange Rule 7.35E, would obviate the need for current Exchange Rule 123C—Equities (The Closing Procedures), which is how the Exchange currently determines the Official Closing Price for an Exchange listed security.

[18] *See* Proposed Exchange Rule 1.1E (rr).

[19] *See* Proposed Exchange Rule 1.1E (ss).

[20] *See* Proposed Exchange Rule 1.1E (xx). The Exchange also proposes to amend a cross reference in Exchange Rule 1.1 (hhh).

[21] *See* Proposed Exchange Rule 2.2E. The Exchange is not adopting the rule text in NYSE Arca Equities Rule 2.2 relating to registered broker dealers, because the Exchange believes it is not necessary.

[22] *See* Proposed Exchange Rule 2.4E.

[23] *See* Proposed Exchange Rule 2.4E.

[24] *See* Proposed Exchange Rule 2.6E.

Equities Rule 2.6. Proposed Exchange Rule 2.17E would set forth ''Activity Assessment Fees'' for securities transactions effected on the Exchange, as required by Section 31 of the Act, and would specify that the Exchange may retain payment to help fund its regulatory expenses.[25] The Exchange represents that proposed Exchange Rule 2.17E is based on current Exchange Rule 440H—Equities.

Proposed Exchange Rule 2.21E would specify registration requirements for employees of ETP Holders, including examination requirements, continuing education requirements, and procedures for registering employees. The proposed rule would prohibit an ETP Holder from employing an Exchange employee during regular Exchange business hours.[26] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 2.21.[27]

Proposed Exchange Rule 2.22E would set forth the Exchange back-up systems and mandatory testing requirements of the Exchange. The Exchange represents that the proposed rule is based on current Exchange Rule 49(b)—Equities.[28] Proposed Exchange Rule 2.24E would set forth the retention requirements for ETP books and records.[29] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 2.24.[30]

C. Exchange Rule 3E—Organization and Administration of the Exchange

The next section of proposed Exchange rules would govern the internal administration of the Exchange. Proposed Exchange Rule 3.6E would allow the Exchange to enter into agreements with domestic and foreign self-regulatory organizations to provide for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement, and other regulatory purposes.[31] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 3.6.[32] Proposed Exchange Rule 3.11E would set forth fingerprint-based background checks of Exchange employees and other personnel related to the Exchange.[33] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 3.11 and current Exchange Rule 28—Equities.

D. Exchange Rule 6E—Business Conduct

The next section of proposed Exchange rules would govern the business conduct of ETP Holders and their associated persons. Proposed Exchange Rule 6.3E would establish the Exchange's requirement that every ETP Holder establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the ETP Holder or persons associated with the ETP Holder.[34] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 6.3.

Proposed Exchange Rule 6.10E would specify an ETP Holder's obligations with respect to trading on the Exchange when holding any options that are not issued by the Options Clearing Corporation.[35] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 6.10.

Proposed Exchange Rule 6.12E would govern requirements for joint accounts between an ETP Holder and another person, including reporting obligations to the Exchange.[36] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 6.12.

Proposed Exchange Rule 6.15E would prohibit ETP Holders from participating in a prearranged trade.[37] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 6.15(b).

E. Exchange Rule 7E—Equities Trading

The proposed rules under Exchange Rule 7E would set forth how trading would be conducted on the Exchange. Section 1 of proposed Exchange Rule 7E would set forth general provisions relating to cash equities trading on the Pillar trading platform, such as hours of business, clearly erroneous executions, limit up-limit down plan, and clearance and settlement. Section 3 of proposed Exchange Rule 7E would set forth the trading rules for Pillar. Other proposed Exchange rules would provide that the Exchange would not offer a retail liquidity program, set forth rules related to the Exchange routing broker, and adopt rules to comply with the Tick Size Pilot Plan. The Exchange represents that the trading system and rules are based on the rules of NYSE Arca Equities.

1. General Provisions

The general provisions of the proposed trading rules would set out the necessary rules for trading on the Exchange, including rules governing when the Exchange would be open for business, how clearly erroneous executions would be handled by the Exchange, how the Exchange would clear and settle securities transactions conducted on the Exchange, requirements for short sales, and the limit up-limit down plan.

Proposed Exchange Rule 7.1E would set forth the hours of operation for the Exchange.[38] The proposed rule also sets forth when the Exchange Chief Executive Officer may take specified actions, such as halting or suspending trading in some or all securities on the Exchange. The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.1 and current Exchange Rule 51—Equities.[39]

Proposed Exchange Rule 7.2E would set forth the holiday schedules for the Exchange.[40] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.2 and current Exchange Rule 51.10—Equities.

Proposed Exchange Rule 7.3E would specify that ETP Holders may not charge fixed commissions and that they must indicate whether they are acting as a broker or as a principal.[41] The Exchange

[25] *See* Proposed Exchange Rule 2.17E.

[26] *See* Proposed Exchange Rule 2.21E.

[27] The Exchange represents that proposed Exchange Rule 2.21E, together with proposed Exchange Rule 2.4E, would render the following current Exchange rules obsolete: Rule 345—Equities (Employees—Registration, Approval, Records); Rule 345A—Equities (Continuing Education for Registered Persons); and Rule 342—Equities (Compliance Supervisors) related to DMM Series 14A requirement. However, an Exchange member organization engaged in a public business in addition to a DMM business must have a qualified compliance supervisor that has passed the Series 14A examination, but would no longer need the Series 14A examination.

[28] *See* Proposed Exchange Rule 2.22E. The Exchange would designate current Exchange Rule 49—Equities (Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing) as not applicable to Pillar trading.

[29] *See* Proposed Exchange Rule 2.24E.

[30] The Exchange represents that proposed Exchange Rule 2.24E would set forth the same requirements as current Exchange Rule 440—Equities (Books and Records), therefore current Exchange Rule 440—Equities would not be applicable on Pillar.

[31] *See* Proposed Exchange Rule 3.6E.

[32] The Exchange proposes that current Rule 27—Equities would not be applicable on Pillar because proposed Exchange Rule 3.6E would cover the same matter. *See id.*

[33] *See* Proposed Exchange Rule 3.11E.

[34] *See* Proposed Exchange Rule 6.3E.

[35] *See* Proposed Exchange Rule 6.10E. The Exchange proposes that current Exchange Rule 96—Equities would not be applicable for trading on Pillar.

[36] *See* Proposed Exchange Rule 6.12E. The Exchange proposes that current Exchange Rule 93—Equities (Trading for Joint Account) and Rule 94—Equities (Designated Market Maker's or Odd-Lot Dealers Interest in Joint Accounts) would not be applicable for trading on Pillar.

[37] *See* Proposed Exchange Rule 6.15E. The Exchange proposes that current Exchange Rule 78—Equities would not be applicable on Pillar. *See* Notice, 82 FR at 10819.

[38] *See* Proposed Exchange Rule 7.1E.

[39] The Exchange proposes that current Exchange Rule 12—Equities and Rule 51—Equities would not be applicable for trading on Pillar. *See id.*

[40] *See* Proposed Exchange Rule 7.2E.

[41] *See* Proposed Exchange Rule 7.3E.

represents that the proposed rule is based on NYSE Arca Equities Rule 7.3.[42]

Proposed Exchange Rule 7.4E would set the ex-dividend or ex-right dates for stocks traded ''regular'' way.[43] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.4.[44]

Proposed Exchange Rule 7.7E would establish that all bids and offers on the Exchange would be anonymous unless otherwise specified by the ETP Holder.[45] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.7.

Proposed Exchange Rule 7.8E would specify that all bids and offers will be considered ''regular way,'' and the Exchange would not accept orders that are not entered for regular way settlement.[46] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.8E.[47]

Proposed Exchange Rule 7.9E would state that the execution price of an order is binding, notwithstanding the Exchange's clearly erroneous executions and limit up-limit down rules.[48] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.9.[49]

Proposed Exchange Rule 7.10E would set forth the Exchange's rules governing clearly erroneous executions.[50] The Exchange represents that the proposed rule is based on NYSE Arca Equities 7.10.[51]

Proposed Exchange Rule 7.11E would specify how the Exchange would comply with the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan'')[52] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.11(a), (b)(2), and (b)(5).[53]

The Exchange proposes to amend paragraph (c)(i) of Exchange Rule 7.12E to change the rule cross reference from Rule 123D—Equities to Rule 7.35(e).[54]

Proposed Exchange Rule 7.13E would govern trading suspensions.[55] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.13.

Proposed Exchange Rule 7.14E would govern clearance and settlement procedures.[56] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.14.[57]

Proposed Exchange Rule 7.15E would state that Market Makers may not have an interest in an option that is not issued by the Options Clearing Corporation and prohibit pool dealing in registered securities.[58] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.15.[59]

Proposed Exchange Rule 7.16E would set forth the short sales rule.[60] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.16.[61]

Proposed Exchange Rule 7.17E would establish requirements that all orders and quotes comply with Rule 602 of Regulation NMS (firm quote rule).[62] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.17.[63]

2. Trading Rules for Pillar

The trading rules for Pillar would set forth definition of orders, how auctions would operate, how orders are displayed and ranked, and how orders are executed. The Exchange represents that the proposed trading rules are based on NYSE Arca Equities rules, with the exception of rules governing orders and modifiers and rules governing trading sessions.

Proposed Exchange Rule 7.29E would specify that, to obtain authorized access to the Exchange, each ETP Holder would be required to enter into a User Agreement.[64] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.29(a).

Proposed Exchange Rule 7.30E would establish requirements for ETP Holders relating to authorized traders who can obtain access to the Exchange on behalf of an ETP Holder.[65] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.30.

Proposed Exchange Rule 7.31E would set forth the primary order types, time in force modifiers for the order types, orders with conditional or undisplayed price and/or size, non-routable and routable order instructions, operations of pegged orders, and other order types that would be available on the Pillar trading platform.[66] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.31 with the following differences: (1) The self-trade prevention (''STP'') modifiers would not include references relating to ETPIDs;[67] (2) Arca Only Orders would be renamed ''MKT Only Orders'' on the Exchange;[68] (3) ETP Holders would be permitted to specify that Primary Only Day/IOC Orders in NYSE Arca-listed securities may include an instruction to be routed to NYSE Arca as a routable order, as set forth in proposed Rule 7.31E(f)(1)(B);[69] and (4) NYSE Arca Equities Rule 7.31.02 would not be adopted.[70]

Proposed Exchange rule 7.32E would set forth the maximum order entry size at 5 million shares.[71] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.32.[72]

Proposed Exchange Rule 7.33E would require ETP Holders to include, with each order entered into the Exchange, their capacity code information, whether as principal, agent, or riskless principal.[73] The Exchange represents

[42] The Exchange proposes that current Exchange Rule 388—Equities (Prohibition Against Fixed Rates of Commission) would not be applicable for trading on Pillar.

[43] *See* Proposed Exchange Rule 7.4E.

[44] The Exchange proposes that current Exchange Rule 235—Equities would not be applicable for trading on Pillar.

[45] *See* Proposed Exchange Rule 7.7E.

[46] *See* Proposed Exchange Rule 7.8E.

[47] The Exchange proposes that current Exchange Rules 12—Equities, 14—Equities, and 73—Equities would not be applicable for trading on Pillar.

[48] *See* Proposed Exchange Rule 7.9E.

[49] The Exchange proposes that current Exchange Rules 71—Equities (Precedence of Highest Bid and Lowest Offer) and 411—Equities (Erroneous Reports) would not be applicable for trading on Pillar.

[50] *See* Proposed Exchange Rule 7.10E.

[51] The Exchange proposes that current Exchange Rule 128—Equities (Clearly Erroneous Executions) would not be applicable for trading on Pillar.

[52] *See* Proposed Exchange Rule 7.11E.

[53] The Exchange proposes that current Exchange Rule 80C—Equities would not be applicable for trading on Pillar.

[54] *See* Proposed Exchange Rule 7.12E. The Exchange proposes Rule 7.35E to govern auctions. Accordingly, the Exchange proposes that the procedures set out in current Exchange Rule 123D—Equities would not be applicable on the Pillar trading platform.

[55] *See* Proposed Exchange Rule 7.13E.

[56] *See* Proposed Exchange Rule 7.14E.

[57] The Exchange proposes that current Exchange Rules 130—Equities and 132—Equities would not be applicable for trading on Pillar.

[58] *See* Proposed Exchange Rule 7.15E.

[59] The Exchange proposes that current Exchange Rule 105—Equities would not be applicable for trading on Pillar.

[60] *See* Proposed Exchange Rule 7.16E.

[61] The Exchange proposes that current Exchange Rule 440B—Equities (Short Sales) would not be applicable for trading on Pillar.

[62] *See* Proposed Exchange Rule 7.17E.

[63] The Exchange proposes that current Exchange Rule 60—Equities (Dissemination of Quotations) would not be applicable for trading on Pillar.

[64] *See* Proposed Exchange Rule 7.29E.

[65] *See* Proposed Exchange Rule 7.30E.

[66] *See* Proposed Exchange Rule 7.31E.

[67] *See* Proposed Exchange Rule 7.31E(i)(2). Because the Exchange would be operating on Pillar phase II protocols only, STPs would be based on the MPID of an ETP Holder and not on an ETP ID. Consequently, proposed Exchange Rule 7.32E(i)(2) would not include references from NYSE Arca Equities Rule 7.31(i)(2) relating to ETPIDs (ETP identifications).

[68] *See* Proposed Exchange Rule 7.31E(e)(1).

[69] *See* Proposed Exchange Rule 7.31E(f)(1)(B).

[70] The Exchange proposes that current Exchange Rules 13—Equities (Orders and Modifiers) and 1000(c)—Equities would not be applicable to trading on Pillar.

[71] *See* Proposed Exchange Rule 7.32E.

[72] The Exchange proposes that the current maximum order size references before subparagraph (a) in Exchange Rule 1000—Equities would not be applicable to trading on Pillar.

[73] *See* Proposed Exchange Rule 7.33E.

that the proposed rule is based on NYSE Arca Equities Rule 7.33.

Proposed Exchange Rule 7.34E would specify that the Exchange would operate three trading sessions each day: Early, Core, and Late.[74] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.34, except that the early trading session would start at 7:00 a.m. Eastern Time rather than 4:00 a.m. Eastern Time for NYSE Arca Equities.[75]

Proposed Exchange Rule 7.35E would set forth the auction rules.[76] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.35, with some substantive differences.[77] First, the Exchange states that, because it lists the securities of operating companies, instead of the exchange traded products listed on NYSE Arca, the auction-collar thresholds should be wider than those on NYSE Arca, and the Exchange proposes auction collars based on the collars for the Nasdaq opening and closing crosses. Second, the Exchange, based on the rules of Nasdaq, proposes to provide that the Closing Auction Imbalance Freeze would begin ten minutes (instead of one minute) before the scheduled time for the closing auction.

Proposed Exchange Rule 7.36E would set forth how orders are ranked and displayed, and the priority of orders.[78] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.36.

Proposed Exchange Rule 7.37E would set forth how orders would execute and route, the data feeds the Exchange would use, the prohibition on quotations that lock or cross the best protected bid or offer, and exceptions to the Commission's Order Protection Rule.[79] The Exchange represents that the proposed rule is based on NYSE Arca Equities 7.37, except that the Exchange would not be using data feeds from broker-dealers or routing to away markets that do not display protected quotations.[80]

Proposed Exchange Rule 7.38E sets forth how odd-lot and mixed-lot orders are treated on the Exchange.[81] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.38.

Proposed Exchange Rule 7.39E sets forth how trading would occur on the Exchange through its off-hours trading facility.[82] The Exchange proposes to permit only aggregate-price coupled orders—an order to buy or sell a group of securities (no fewer than 15) having a total market value of $1 million or more—through the off-hours trading facility. The Exchange represents that NYSE Arca Equities Rule 7.39 would not be adopted, but rather, current Exchange Rule 900 series would form the basis for the proposed rules.[83]

Proposed Exchange Rule 7.40E would set forth the Exchange's obligation to report trades to an appropriate consolidated transaction reporting system.[84] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.40.[85]

Proposed Exchange Rule 7.41E would specify that each executed transaction on the Exchange will be automatically processed for clearance and settlement on a locked-in and anonymous basis.[86] With the exception of proposed Exchange Rule 7.41E(c), the Exchange represents that the proposed rule is based on NYSE Arca Equities 7.41. The Exchange represents that proposed Exchange Rule 7.41E(c) is based on NYSE Rule 130(b), which specifies the circumstances under which the Exchange may reveal the contra-party identity.[87]

3. Retail Liquidity Program Would Not Be Available

The Exchange currently operates a retail liquidity program on a pilot basis.[88] The Exchange proposes that it would not establish a retail liquidity program on Pillar.

4. Rules Related to Exchange Routing Broker

Proposed Exchange Rule 7.45E would establish the rules for the Exchange's routing broker.[89] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.45.[90]

5. Rules Related to Tick Size Pilot Plan

Proposed Exchange Rule 7.46E sets forth the rules for the Tick Size Pilot Plan.[91] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.46, with the exception of references to the retail liquidity program.[92]

F. Exchange Rule 12E—Arbitration

Proposed Exchange Rule 12E would provide that disputes between or among ETP Holders and their associated persons would be resolved via arbitration.[93] The Exchange represents that the proposed rule is based on current Exchange Rule 600—Equities.

G. Exchange Rule 13E—Liability of Directors and the Exchange

Proposed Exchange Rule 13.2E would set forth requirements governing liability of the Exchange, including the limits on liability under specified circumstances.[94] The Exchange represents that the proposed rule is based on current Exchange Rule 905NY and NYSE Arca Equities Rule 13.2. Proposed Exchange Rule 13.3E would set forth when ETP Holders and their associated persons may sue Exchange

[74] *See* Proposed Exchange Rule 7.34E. The Exchange proposes that NYSE Arca Equities Rule 7.34(b)(2) and (b)(3) would not be adopted.

[75] *See, e.g.,* Proposed Exchange Rule 7.34E.

[76] *See* Proposed Exchange Rule 7.35E.

[77] The Exchange proposes that current Exchange Rules 15—Equities, 115A—Equities, 116.40—Equities, 123C—Equities, and 123D—Equities would not be applicable on Pillar.

[78] *See* Proposed Exchange Rule 7.36E.

[79] *See* Proposed Exchange Rule 7.37E.

[80] The Exchange proposes that the following rules would not be applicable to trading on the Pillar trading platform: Exchange Rules 15A—Equities (Order Protection Rule), 19—Equities (Locking or Crossing Protected Quotations in NMS Stocks), 60—Equities (Dissemination of Quotations), 61—Equities (Recognized Quotations), 72—Equities (Priority of Bids and Offers and Allocation of Executions), 79A.15—Equities, 100(a) and (b)—Equities (Automatic Executions), 1001—Equities (Execution of Automatically Executing Orders), 1002—Equities (Availability of Automatic Execution Feature), and 1004—Equities (Election of Buy Minus and Sell Plus).

[81] *See* Proposed Exchange Rule 7.38E.

[82] *See* Proposed Exchange Rule 7.39E.

[83] NYSE Arca Equities Rule 7.39 addresses the adjustment of open orders. Because the Exchange does not propose to have any open orders when trading on the Pillar trading platform, the Exchange would not adopt rule text based on NYSE Arca Equities Rule 7.39.

[84] *See* Proposed Exchange rule 7.40E.

[85] The Exchange proposes that current Exchange Rule 128A—Equities would not be applicable on Pillar.

[86] *See* Proposed Exchange rule 7.41E.

[87] The Exchange represents that proposed Exchange Rule 7.41E.10 is based on current Exchange Rule 132.10—Equities. The Exchange proposes that current Exchange Rules 130—Equities (Overnight Comparison of Exchange Transaction), 132—Equities (Comparison and Settlement of Transactions Through a Fully-Interfaced or Qualified Clearing Agency), 133—Equities (Comparison—Non-cleared Transactions), 134—Equities (Differences and Omissions—Non-cleared Transactions (''DKs'')), and 136—Equities (Comparison—Transactions Excluded from a Clearance) would not apply to trading on Pillar. *See* Notice, 82 FR at 10821.

[88] *See* Securities Exchange Act Release Nos. 67347 (Jul. 3, 2012), 77 FR 40673 (Jul. 10 2012) (approving the retail liquidity program on a pilot basis); 79587 (Dec. 16, 2016), 81 FR 93975 (Dec. 22, 2016) (extending the pilot until June 30, 2017) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84).

[89] *See* Proposed Exchange Rule 7.45E.

[90] The Exchange proposes that current Exchange Rule 17—Equities (Use of Exchange Facilities and Vendor Services) would not be applicable on Pillar.

[91] *See* Proposed Exchange Rule 7.46E.

[92] The Exchange proposes that current Exchange Rule 67—Equities (Tick Size Pilot Plan) would not be applicable on Pillar.

[93] *See* Proposed Exchange Rule 12E.

[94] *See* Proposed Exchange Rule 13.2E. The Exchange proposes that current Exchange Rule 18—Equities would not be applicable on Pillar. *See* Notice, 82 FR at 10822.

subsidiaries and personnel.[95] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 13.3. Proposed Exchange Rule 13.4E would determine the responsible party for legal costs when the Exchange is defending a legal proceeding.[96] The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 13.4.

H. Current Exchange Rules Not Applicable on Pillar

As noted earlier, the Exchange would no longer operate a trading floor once the Exchange transitions to Pillar. As a result, the Exchange proposes that certain current rules that relate to floor-based trading would not be applicable on Pillar.[97]

III. Discussion and Findings

After careful review of the proposal, the Commission finds, for the reasons discussed below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange.[98] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[99] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market systems and, in general, to protect investors and the public interest and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

A. Pillar Trading System

The proposal would replace the Exchange's current floor based trading, which has a parity-allocation model, with a fully automated, electronic trading system with a price-time-priority model. The Commission notes that the proposed rules closely parallel, and are substantially similar to, current NYSE Arca Equities rules and current Exchange rules, which were filed and approved by the Commission (or which became immediately effective) pursuant to Section 19(b) of the Act. NYSE Arca Equities currently operates using the Pillar trading platform, and most other national securities exchanges operate fully electronic markets that use a price-time-priority model. Accordingly, the Commission believes that the proposal raises no novel regulatory issues, that it is reasonably designed to protect investors and the public interest, and that it is consistent with the requirements of the Act.

B. Section 11(a) of the Act

Section 11(a)(1) of the Act[100] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act,[101] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once the order has been transmitted to the member performing the execution;[102] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor an associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Commission believes that ETP Holders entering orders into the Exchange's Pillar trading system would satisfy the requirements of Rule 11a2–2(T).[103]

Rule 11a2–2(T)'s first requirement is that orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that it will not have a physical trading floor once it transitions to the Pillar trading platform, and the Exchange's Pillar trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces.[104] In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[105] Because the Pillar trading system receives orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the Pillar

[95] *See* Proposed Exchange Rule 13.3E.

[96] *See* Proposed Exchange Rule 13.4E. The Exchange proposes that current Exchange Rule 25—Equities (Exchange Liability for Legal Costs) would not be applicable on Pillar. *See* Notice, 82 FR at 10822.

[97] *See* Notice, 82 FR at 10823–10824, for a list of current Exchange rules related to floor-based trading that would not be applicable on Pillar.

[98] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[99] 15 U.S.C. 78f(b)(5).

[100] 15 U.S.C. 78k(a)(1).

[101] 17 CFR 240.11a2–2(T).

[102] This prohibition also applies to associated persons of the initiating member. The member may, however, participate in clearing and settling the transaction.

[103] The Exchange has clarified that its analysis relating to Section 11(a) of the Act in the Notice applies to the Exchange's proposed Pillar trading platform and does not apply to trading in the Exchange's off-hours trading facility, which is to be governed by proposed Rule 7.39E (''Off-Hours Trading Facility''). *See* Email from Clare Saperstein, Associate General Counsel, NYSE Group, Inc. to Yue Ding, Jennifer Dodd, and Steve Kuan, Division of Trading and Markets, Commission (May 2, 2017). The Exchange has also clarified that its Off-Hours Trading Facility would continue to operate on its existing technology and would not operate on the proposed Pillar trading platform. *See id.* Additionally, the Exchange represents that it is not proposing any new or different functionality for its Off-Hours Trading Facility and that member organizations using the Off-Hours Trading Facility pursuant to proposed Rule 7.39E would continue to be required to comply with Section 11(a)(1) of the Act, and any applicable exceptions thereto as are currently applicable to the Exchange's off-hours trading facility under the Exchange's Rule 900 Series, which is based on the rules of the New York Stock Exchange LLC (''NYSE''). *See id.; see also* Securities Exchange Act Release Nos. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994) (SR–NYSE–93–50) (approving the NYSE's off-hours trading facility on a permanent basis); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving the NYSE's off-hours trading facility on a temporary basis); and 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR–Amex–2008–63) (approving the adoption of new equity trading rules by the Exchange that are substantially identical to the equity trading rules of NYSE).

[104] *See* Notice, *supra* note 3, 82 FR at 10825.

[105] In the context of other all-electronic systems, the Commission has similarly found that the off-floor transmission requirement is met if the system receives orders electronically through remote terminals or computer-to-computer interfaces. *See, e.g.,* Securities Exchange Act Release Nos. 61419 (Jan. 26, 2010), 75 FR 5157 (Feb. 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (Mar. 12, 2008), 73 FR 14521 (Mar. 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10–131) (granting the application of The Nasdaq Stock Market LLC for registration as a national securities exchange); and 44983 (Oct. 25, 2001), 66 FR 55225 (Nov. 1, 2001) (SR–PCX–00–25) (approving the establishment of the Archipelago Exchange as the equities trading facility of PCX Equities, Inc., a subsidiary of the Pacific Exchange, Inc.).

trading system would satisfy this off-floor transmission requirement.

Second, Rule 11a2–2(T) requires that neither the initiating member nor an associated person of the initiating member participate in the execution of the transaction at any time after the order for the transaction has been transmitted. The Exchange represents that the Pillar trading system would at no time following the submission of an order allow an ETP Holder or an associated person of the ETP Holder to acquire control or influence over the result or timing of the order's execution.[106] According to the Exchange, the execution of an ETP Holder's order would be determined solely by the quotes and orders that are present in the system at the time the member submits the order and by the order priority under the Exchange rules.[107] Accordingly, the Commission believes that an Exchange member and its associated persons would not participate in the execution of an order submitted to the Pillar trading system.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member that is not associated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[108] The Exchange represents that the design of the Pillar trading system ensures that no ETP Holder has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange.[109] Based on the Exchange's representation, the Commission believes that the Pillar trading system would satisfy this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[110] ETP Holders trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[111]

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2017–01 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–NYSEMKT–2017–01. 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–2017–01 and should be submitted on or before May 31, 2017.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

As noted above, in Amendment No. 1, the Exchange proposes to: (1) Amend proposed Exchange Rule 7.35E(a)(10)(A) to specify the ''Auction Collar'' as the greater of $0.50 or 10% away from the Auction Reference Price and delete the specified percentages to conform to SR–NYSEArca–2016–130; (2) amend proposed Exchange Rule 7.35E(d)(2) to note that the Closing Auction Imbalance Freeze will begin ten minutes (rather than one minute) before the scheduled time for the Closing Auction; (3) amend proposed Exchange Rule 7.35E(f)(2) to reject certain orders until after the Auction Processing Period for the IPO Auction has concluded; (4) amend

[106] *See* Notice, *supra* note 3, 82 FR at 10825.

[107] *See id.* The Exchange notes that Rule 11a2–2(T) does not preclude a member from cancelling or modifying orders, or from modifying the instructions for executing orders, after they have been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. *See id.* The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as the modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542 (Mar. 17, 1978) (''1978 Release'') (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[108] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* Securities Exchange Act Release No. 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979).

[109] *See* Notice, *supra* note 3, 82 FR at 10825.

[110] In addition, Rule 11a2–2(T)(d) requires that, if a member or associated person is authorized by written contract to retain compensation in connection with effecting transactions for covered accounts over which the member or associated person thereof exercises investment discretion, the member or associated person must furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 107 (''The contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[111] The Exchange has represented that it will advise its membership through the issuance of a Regulatory Bulletin that those ETP Holders trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the exemption in Rule 11a2–2(T). *See* Notice, *supra* note 3, 82 FR at 10825.

proposed Exchange Rule 7.35E(h)(3)(A) and (B) to define ''previously-live orders'' for Core Open Auction, Trading Halt Auction, Closing Auction, and IPO Auction and to define how unexecuted orders would be processed when the Exchange transitions from continuous trading from a prior trading session; (5) amend proposed Exchange rule 7.31E(h)(3)(A) to specify that Discretionary Pegged Orders do not participate in any auctions; (6) amend proposed Exchange Rule 7.34E(c)(1)(A) to add a provision that Discretionary Pegged Orders may not be entered before or during the Early Trading Session; (7) amend proposed Exchange Rule 7.46E to reflect recent changes to publication dates with respect to the Tick Size Pilot Plan; and (8) state that the Pillar transition is anticipated to occur in the third quarter of 2017.

The Commission believes that Amendment No. 1 does not raise novel regulatory issues and is based on, and substantively identical to, the existing rules of other self-regulatory organizations. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[112] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, that pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as modified by Amendment No. 1, (SR–NYSEMKT–2017–01), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[113]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09419 Filed 5–9–17; 8:45 am]

BILLING CODE 8011–01–P

[112] 15 U.S.C. 78s(b)(2).

[113] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80605; File Nos. SR–DTC–2017–802; SR–NSCC–2017–802]

Self-Regulatory Organizations; The Depository Trust Company; National Securities Clearing Corporation; Notice of Filing of and No Objection To Advance Notices, as Modified by Amendments No. 1, To Renew the Credit Facility

May 5, 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'')[1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on April 4, 2017 The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' together with DTC, ''Clearing Agencies'') filed with the Securities and Exchange Commission (''Commission'') the advance notices SR–DTC–2017–802 and SR–NSCC–2017–802. On May 1, 2017, the Clearing Agencies filed Amendments No. 1 to the advance notices.[3] The advance notices, as modified by Amendments No. 1 (hereinafter, collectively ''Advance Notices''), are described in Items I, II and III below, which Items have been prepared primarily by the Clearing Agencies. The Commission is publishing this notice to solicit comments on the Advance Notices from interested persons and providing notice that the Commission does not object to the Advance Notices.

I. Clearing Agencies' Statement of the Terms of Substance of the Advance Notices

These Advance Notices are filed by the Clearing Agencies in connection with their proposals to (1) renew (''Renewal'') their 364-day committed revolving credit facility (''Credit Facility''), described below, and (2) make annual renewals of the Credit Facility on substantially similar terms and conditions (''Future Renewals''), also described below, as described in greater detail below.[4]

II. Clearing Agencies' Statement of the Purpose of, and Statutory Basis for, the Advance Notices

In their filings with the Commission, the Clearing Agencies included statements concerning the purpose of and basis for the Advance Notices and discussed any comments they received on the Advance Notices. The text of these statements may be examined at the places specified in Item IV below. The Clearing Agencies have prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agencies' Statement on Comments on the Advance Notices Received From Members, Participants, or Others

The Clearing Agencies have not solicited or received any written comments relating to these proposals. The Clearing Agencies will notify the Commission of any written comments received by the Clearing Agencies.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Description of the Proposals

Renewal. As part of their liquidity risk management regime, the Clearing Agencies maintain a 364-day committed revolving line of credit with a syndicate of commercial lenders, which is renewed every year. The terms and conditions of the current Renewal would be specified in the Sixteenth Amended and Restated Revolving Credit Agreement, to be dated as of May 9, 2017 (''Renewal Agreement''), among the Clearing Agencies,[5] the lenders party thereto, the administrative agent and the collateral agent. Such terms and conditions are substantially the same as the terms and conditions of the existing credit agreement, dated as of May 10, 2016, as heretofore amended (''Existing Agreement''),[6] except that pricing[7] and the amount of the aggregate commitment for NSCC may change. The substantive terms of the Renewal Agreement are set forth in the Summary of Indicative Principal Terms and Conditions, dated March 30, 2017, which is not a public document. The aggregate commitments being sought under the Renewal would be for an amount up to $14 billion for NSCC and DTC together, of which all but $1.9 billion commitment would be the

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] In Amendments No. 1 to the advance notices, the Clearing Agencies request Commission approval to (i) accept $14.075 billion in aggregate commitments for this year's facility, and (ii) clarify that for future renewals of the credit facility, the Clearing Agencies may accept, not just seek, an aggregate commitment amount within 15 percent of $14 billion, as discussed below.

[4] Terms not defined herein are defined in the Terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf;* or Rules and Procedures of NSCC (''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] The Renewal Agreement would provide for both DTC and NSCC as borrowers, with an aggregate commitment of $1.9 billion for DTC and the amount of any excess aggregate commitment for NSCC. The borrowers are not jointly and severally liable and each lender has a ratable commitment to each borrower. DTC and NSCC provide separate collateral to secure their respective borrowings.

[6] *See* Securities Exchange Act Release No. 77750 (April 29, 2016), 81 FR 27181 (May 5, 2016) (SR–DTC–2017–801; SR–NSCC–2016–801).

[7] ''Pricing'' of the Credit Facility refers to the charges and fees owed by the borrowers to the agents and lenders thereto with respect to the services performed by the agents, the commitment to lend and the rate of interest applicable to any borrowing under the Credit Facility, among other such matters.

aggregate commitment to NSCC as borrower, as provided in the Existing Agreement; however, the Clearing Agencies may, subject to obtaining all proper internal approvals, accept aggregate commitments under the Renewal up to $14.075 billion.

Future Renewals. The Clearing Agencies expect to continue to renew the Credit Facility annually on substantially similar terms and conditions as the Renewal. The terms and conditions of all Future Renewals would be specified in subsequent credit agreements among the Clearing Agencies, the lenders party thereto, the administrative agent and the collateral agent.

In connection with all Future Renewals, the Clearing Agencies would not make changes to (a) the amount of aggregate commitment being sought for or accepted by DTC, which would continue to be $1.9 billion; (b) the financial institution acting as administrative agent; or (c) the commitment period, which would continue to be for 364 days.

However, in connection with all Future Renewals, the Clearing Agencies may consider changes to (1) the amount of aggregate commitment being sought for and accepted by NSCC, so long as such amounts do not vary more than 15 percent either above or below the amount of aggregate commitment being sought by NSCC under the Renewal being proposed by this Advance Notice, which would be no less than $10.285 billion and no more than $13.915 billion; [8] (2) the syndicate, so long as all lenders party to future Credit Facilities are subject to the same credit review as those lenders party to the Renewal; (3) pricing and collateral haircuts,[9] so long as such terms are consistent with the then current market practice; or (4) representations, warranties, covenants, and terms of events of default,[10] so long as any modifications are immaterial to the Clearing Agencies as a borrower and do not impair the Clearing Agencies' ability to borrow under the line of credit. The Clearing Agencies would not consider such changes as materially altering the terms and conditions of the Credit Facility.

So long as the Clearing Agencies do not make changes to the terms described in items (a), (b), and (c) above in any Future Renewal, and so long as any Future Renewal adheres to the conditions described in items (1) through (4) above, the Clearing Agencies would consider such Future Renewal as being on substantially the same terms and conditions as the Renewal and predecessor agreements such that it would not need to be subject to the requirement to file an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act.[11] In the event that any annual renewal of the Credit Facility is not on terms and conditions that are substantially similar to the Renewal, as specified in the paragraphs above, such renewal would be subject to an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act. If the Clearing Agencies determine to address future renewals in such filing, it would include in that filing the proposed conditions to the terms of any subsequent renewals.

Expected Effect on Risks to the Clearing Agencies, Their Participants and the Market

The Renewal and Future Renewals would continue to promote the reduction of liquidity risk to the Clearing Agencies, DTC's Participants, NSCC's Members (collectively, ''Members''), and the securities market in general because they would help the Clearing Agencies maintain sufficient liquidity resources to timely meet their settlement obligations with a high degree of confidence. The Renewal Agreement and its substantially similar predecessor agreements have been in place since the introduction of same day funds settlement at the Clearing Agencies, and the Clearing Agencies expect to continue to renew the Credit Facility annually pursuant to Future Renewals.

Management of Identified Risks

The Clearing Agencies require same day liquidity resources to cover the failure-to-settle of their Member, or affiliated family of Members, with the largest aggregate liquidity exposure. If a Member defaults on its end-of-day net settlement obligation, the Clearing Agencies may borrow under the Credit Facility to enable them, if necessary, to fund settlement among non-defaulting Members, including settlement of guaranteed trades due to settle. Any NSCC borrowing would be secured principally by (i) securities deposited by NSCC Members in NSCC's Clearing Fund [12] (*i.e.,* the Eligible Clearing Fund Securities, as defined in NSCC's Rules, pledged by Members to NSCC in lieu of cash Clearing Fund deposits) and (ii) securities cleared through NSCC's Continuous Net Settlement System that were intended for delivery to the defaulting Member upon payment of its net settlement obligation. In addition to the Credit Facility and the Clearing Fund, NSCC has diversified its liquidity resources by implementing a commercial paper and extendible-term note facility.[13] Any DTC borrowing would be secured principally by (i) securities that were intended to be delivered to the defaulting DTC Participant upon payment of its net settlement obligation and (ii) securities previously designated by the defaulting Participant as collateral.

As integral parts of NSCC's risk management structure, the Credit Facility, the commercial paper and extendible-term note facility, and the Clearing Fund, together, provide NSCC liquidity to complete end-of-day net funds settlement.

The Credit Facility is built into DTC's primary risk management controls, the Net Debit Cap [14] and Collateral Monitor,[15] which together require that

[8] NSCC believes that, given the average size of the commitments for NSCC in past Credit Facilities, a difference of no more than 15 percent, either above or below the aggregate NSCC commitment of the Renewal would not be a material change.

[9] ''Collateral haircuts'' with respect to the collateral for any borrowing under the Credit Facility refers to the schedule of percentages of market value, by type of collateral, determining the collateral value of that type of collateral, for purposes of securing a borrowing under the Credit Facility.

[10] ''Events of default'' under the Credit Facility refers to those events or conditions which trigger or constitute a default of the borrowers under the agreement (*e.g.,* a breach of terms or conditions or a failure to perform an obligation).

[11] 12 U.S.C. 5465(e)(1).

[12] NSCC's Clearing Fund (which operates as its default fund) addresses potential exposure through a number of risk-based component charges calculated and assessed daily and includes additional liquidity deposits by certain NSCC Members pursuant to NSCC's Supplemental Liquidity Deposits rule (NSCC's Rule 4(A)). *Supra,* note 3.

[13] *See* Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR–NSCC–2015–802).

[14] The Net Debit Cap risk control is designed so that DTC may complete settlement among non-defaulting DTC Participants, even if the Participant or affiliated family of Participants with the largest settlement obligation that day fails to settle. Before completing a transaction in which a Participant is the receiver, DTC calculates the effect the transaction would have on such Participant's Settlement Account, and determines whether any resulting Net Debit Balance would exceed the Participant's Net Debit Cap. Any transaction that would cause the Net Debit Balance to exceed the Net Debit Cap is placed on a pending (recycling) queue until the Net Debit Cap will not be exceeded by processing the transaction.

[15] DTC tracks Collateral in a DTC Participant's account through the Collateral Monitor. At all times, the Collateral Monitor reflects the amount by which the Collateral Value in the account exceeds the Net Debit Balance in the account. When processing a transaction, DTC verifies that the Collateral Monitor of each of the deliverer and receiver will not become negative when the transaction is processed. If the transaction would cause either party's Settlement Account to have insufficient collateral to support its net settlement obligation, the transaction will recycle until the

Continued

the end-of-day net funds settlement obligation of a DTC Participant cannot exceed DTC's liquidity resources and is fully collateralized.

The Credit Facility is a cornerstone of the Clearing Agencies' risk management and both the Renewal and Future Renewals are critical to the Clearing Agencies' risk management infrastructure. Because the Renewal would preserve substantially similar terms and conditions to the Existing Agreement, and Future Renewals would preserve substantially similar terms and conditions to the Renewal Agreement, the Clearing Agencies believe that the Renewal and Future Renewals would not otherwise affect or alter the management of risk at the Clearing Agencies.

Consistency With the Clearing Supervision Act

The Clearing Agencies believe the Renewal and Future Renewals are consistent with Section 805(b) of the Clearing Supervision Act.[16] The objectives and principles of Section 805(b) of the Clearing Supervision Act are the promotion of robust risk management, promotion of safety and soundness, reduction of systemic risks, and support of the stability of the broader financial system.[17] The Clearing Agencies believe that the Renewal and Future Renewals would promote these objectives and principles because they would provide the Clearing Agencies with a continuing source of committed liquidity to meet its settlement obligations and thus mitigate the Clearing Agencies' liquidity risk. Therefore, the Clearing Agencies believe the Renewal and Future Renewals are consistent with Section 805(b) of the Clearing Supervision Act.[18]

The Clearing Agencies believe the Renewal and Future Renewals are also consistent with Rule 17Ad–22(b)(3),[19] Rule 17Ad–22(d)(11),[20] and Rule 17Ad–22(e)(7) under the Act.[21]

Rule 17Ad–22(b)(3) requires, in part, that central counterparties, like NSCC, to ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions . . . .'' [22] NSCC believes that the Renewal and Future Renewals are consistent with Rule 17Ad–22(b)(3) because they would help NSCC maintain sufficient financial resources to withstand, at a minimum, a default by a NSCC Member to which NSCC has the largest exposure.[23]

Rule 17Ad–22(d)(11) [24] requires that the Clearing Agencies, ''establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.'' The Clearing Agencies believe the Renewal and Future Renewals are consistent with Rule 17Ad–22(d)(11) [25] because they would provide the Clearing Agencies with a readily available liquidity resource that would enable the Clearing Agencies to continue to meet its obligations in a timely fashion, in the event of a Member default, thereby helping to contain losses and liquidity pressures from that default.

Rule 17Ad–22(e)(7), which was recently adopted by the Commission, will require, in part, that the Clearing Agencies ''effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by . . . [m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment of obligation for [each Clearing Agency] in extreme but plausible conditions.'' [26] The Renewal and Future Renewals would provide NSCC with an additional liquidity resource that, together with its other sources of liquidity, including the Clearing Fund and the commercial paper and extendible-term note facility, can be used to complete end of day money settlement in the event a failure of a Member, including the failure of the participant family that would generate the largest aggregate payment of obligation for NSCC in extreme but plausible conditions. The Renewal and Future Renewals would provide DTC with an additional liquidity resource to enable it to complete system-wide settlement notwithstanding the failure-to-settle of a Participant or affiliated family of Participants with the largest net settlement obligation. In this way, the Renewal and Future Renewals are consistent with Rule 17Ad–22(e)(7).[27]

III. Date of Effectiveness of the Advance Notices, 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 Agencies 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 Agencies with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the Advance Notices are filed, or the date further information requested by the Commission is received, if the Commission notifies the Clearing Agencies in writing that it does not object to the proposed change and authorizes the Clearing Agencies to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The Clearing Agencies shall post notice on their Web site of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notices are consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

deficient account has sufficient Collateral to proceed or until the applicable cutoff time occurs.

[16] 12 U.S.C. 5464(b).

[17] *Id.*

[18] *Id.*

[19] 17 CFR 240.17Ad–22(b)(3).

[20] 17 CFR 240.17Ad–22(d)(11).

[21] 17 CFR 240.17Ad–22(e)(7). The Commission adopted amendments to Rule 17Ad–22, including the addition of new section 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). NSCC and DTC are ''covered clearing agencies'' as defined by new Rule 17Ad–22(a)(5) and must comply with new subsection (e) of Rule 17Ad–22 by April 11, 2017.

[22] 17 CFR 240.17Ad–22(b)(3).

[23] *Id.*

[24] 17 CFR 240.17Ad–22(d)(11).

[25] *Id.*

[26] 17 CFR 240.17Ad–22(e)(7).

[27] *Id.*

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2017–802 or SR–NSCC–2017–802 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–2017–802 or SR–NSCC–2017–802. One of these file numbers 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 Notices that are filed with the Commission, and all written communications relating to the Advance Notices 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 filings also will be available for inspection and copying at the principal office of the Clearing Agencies 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–2017–802 or SR–NSCC–2017–802 and should be submitted on or before May 31, 2017.

V. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[28] Section 805(a)(2) of the Clearing Supervision Act[29] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act[30] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.[31]

The Commission has adopted risk management standards under Section 805(a)(2) of the Act[32] and Section 17A of the Act (''Rule 17Ad–22'').[33] The Rule 17Ad–22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[34] Therefore, it is appropriate for the Commission to review changes proposed in advance notices against Rule 17Ad–22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[35] The Commission believes the proposal in the Advance Notices is consistent with the objectives and principles described in Section 805(b) of the Act,[36] and in Rule17Ad–22, in particular, Rule 17Ad–22(e)(7) under the Act.[37]

A. Consistency With Section 805(b) of the Clearing Supervision Act

As discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act because they (i) promote robust risk management; (ii) are consistent with promoting safety and soundness; and (iii) are consistent with reducing systemic risks and promoting the stability of the broader financial system.

The Commission believes that the changes proposed in the Advance Notices are consistent with promoting robust risk management, in particular management of liquidity risk presented to the Clearing Agencies. Renewing and maintaining the currently proposed credit facility in the manner proposed by the Clearing Agencies would diversify the liquidity resources that the Clearing Agencies may use to resolve a Member default. Additionally, allowing the Clearing Agencies annually to renew the credit facility under certain specified circumstances without an additional advance notice, subject to the specific conditions described above (the ''Evergreen'' provisions), would provide the Clearing Agencies and market participants with greater certainty regarding a continuing source of committed liquidity to meet its settlement obligations and thus mitigate the Clearing Agencies' liquidity risk. Further, because the Evergreen provisions would ensure that any such annual renewals would be substantially similar to the currently proposed credit facility, the Commission believes that any such renewals would promote robust risk management by diversifying the liquidity resources that the Clearing Agencies may use to resolve a Member default in the same manner as the currently proposed credit facility. As such, the Commission believes that the proposal would promote robust risk management practices at the Clearing Agencies, consistent with Section 805(b) of the Clearing Supervision Act.[38]

The Commission also believes that the changes proposed in the Advance Notices are consistent with promoting safety and soundness. As described above, the currently proposed credit facility would provide the Clearing Agencies with an additional liquidity resource in the event of a Member default. This liquidity would promote safety and soundness for Members because it would provide the Clearing Agencies with a readily available liquidity resource that would enable them to continue to meet their respective obligations in a timely fashion in the event of a Member default, thereby helping to contain losses and liquidity pressures from that default. Because the Evergreen provisions would ensure that any annual renewals implemented without filing an advance notice would be substantially similar to the currently proposed credit facility, any such annual renewals would promote safety

[28] 12 U.S.C. 5461(b).
[29] 12 U.S.C. 5464(a)(2).
[30] 12 U.S.C. 5464(b).
[31] *Id.*
[32] 12 U.S.C. 5464(a)(2).
[33] *See* 17 CFR 240.17Ad–22.
[34] *Id.*
[35] 12 U.S.C. 5464(b).
[36] *Id.*
[37] 17 CFR 240.17Ad–22(e)(7).
[38] 12 U.S.C. 5464(b).

and soundness for the same reasons. As such, the Commission believes it is consistent with promoting safety and soundness as contemplated in Section 805(b) of the Clearing Supervision Act.[39]

In addition, the Commission believes that the proposal contained in the Advance Notices is consistent with reducing systemic risks and promoting the stability of the broader financial system. As mentioned above, allowing the Clearing Agencies to enter into the currently proposed credit facility would enable the Clearing Agencies, each of which has been designated a systemically important financial market utility,[40] to maintain an additional liquidity resource that the Clearing Agencies may access to help manage a Member default. In addition, because the Evergreen provisions would ensure that any annual renewals entered into without filing an advance notice would be on substantially similar terms to the currently proposed credit facility, such future renewals also would enable the Clearing Agencies to maintain an additional liquidity resource that the Clearing Agencies may access to help manage a Member default. Moreover, allowing the annual renewal of the credit facility under the proposed Evergreen provisions without filing an additional advance notice would reduce the risk of gaps in availability of this liquidity resource. Further, allowing renewal without an advance notice in these specific circumstances would also provide heightened certainty and stability for the Clearing Agencies and market participants regarding the availability of this liquidity risk management resource on an ongoing basis. Accordingly, the Commission believes that the proposal would help to reduce the systemic risk of the Clearing Agencies, which in turn would help to support the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act [41]

B. Consistency With Rule 17Ad–22(e)(7)

The Commission believes that the changes proposed by the Advance Notices are consistent with the requirements of Rules 17Ad–22(e)(7) under the Act.[42] Rule 17Ad–22(e)(7) requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by the Clearing Agencies, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.[43]

In particular, Rule 17Ad–22(e)(7)(i) under the Act [44] requires that registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to ''effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by . . . [m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment of obligation for [each Clearing Agency] in extreme but plausible conditions.''

As described above, the currently proposed credit facility would provide the Clearing Agencies with a readily available liquidity resource that would enable them to continue to meet their respective obligations in a timely fashion in the event of a Member default, thereby helping to contain losses and liquidity pressures from that default. Additionally, because the Evergreen provisions would ensure that any annual renewals would be substantially similar to the currently proposed credit facility, such renewals also would provide the Clearing Agencies with a readily available liquidity resource that would enable them to continue to meet their respective obligations in a timely fashion in the event of a Member default, thereby helping to contain losses and liquidity pressures from that default. Moreover, allowing the Clearing Agencies annually to renew the credit facility pursuant to the proposed Evergreen provisions without filing an additional advance notice would reduce the risk of gaps in liquidity coverage and better allow the Clearing Agencies to continually maintain sufficient liquidity resources. Therefore, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(7)(i).

Rule 17Ad–22(e)(7)(ii) under the Act requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to satisfy payment obligations owed to clearing members.[45] Rule 17Ad–22(a)(14) of the Act defines ''qualifying liquid resources'' to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.[46] As described above, the currently proposed credit facility would permit the Clearing Agencies to enter into a single credit facility designed to help ensure that the Clearing Agencies have sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of their largest family of affiliated members. Similarly, because the Evergreen provisions would ensure that any annual renewals would be substantially similar to the currently proposed credit facility, such renewals also would permit the Clearing Agencies to enter into a single credit facility designed to help ensure that the Clearing Agencies have sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of their largest family of affiliated members. Therefore, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(7)(ii).

VI. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[47] that the Commission does not object to the Advance Notices SR–DTC–2017–802 and SR–NSCC–2017–802 and that DTC and NSCC be and hereby are authorized to implement the change as of the date of this notice.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09459 Filed 5–9–17; 8:45 am]

BILLING CODE 8011–01–P

[39] *Id.*

[40] The Financial Stability Oversight Council designated NSCC a systemically important financial market utility on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[41] *Id.*

[42] 17 CFR 240.17Ad–22(e)(7).

[43] *Id.*

[44] 17 CFR 240.17Ad–22(e)(7)(i).

[45] 17 CFR 240.17Ad–22(e)(7)(ii).

[46] 17 CFR 240.17Ad–22(a)(14).

[47] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80592; File No. SR–PEARL–2017–19]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

May 4, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 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'').

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1(a) of the Fee Schedule that apply to MIAX PEARL Market Makers [3] to (i) increase the ''Maker'' rebate in Tier 3 for transactions of options in Penny classes (as defined below), and (ii) add a new, alternative Volume Criteria to Tier 3 based upon the total monthly volume executed by a Market Maker solely in SPY options on MIAX PEARL, expressed as a percentage of total consolidated national volume in SPY options. The Exchange also proposes to make a minor, non-substantive technical correction to a definition contained in the Definitions section of the Fee Schedule, as described below.

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member [4] on MIAX PEARL in the relevant, respective origin type (not including Excluded Contracts) [5] expressed as a percentage of TCV.[6] In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (''Tier'') has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.[7] Members that place resting liquidity, *i.e.,* orders resting on the book of the MIAX PEARL System,[8] are paid the specified ''maker'' rebate (each a ''Maker''), and Members that execute against resting liquidity are assessed the specified ''taker'' fee (each a ''Taker''). For opening transactions and ABBO uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Pilot Program [9] (''Penny classes'') than for order executions in standard option classes which are not in the Penny Pilot Program (''Non-Penny classes''), where Members are assessed higher transaction fees and receive higher rebates.

Transaction rebates and fees applicable to all Market Makers are currently assessed according to the following table:

[3] ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[4] ''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* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[6] ''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 ''Exchange System Disruption'' (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term ''Exchange System Disruption'' and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[7] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the process described in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[8] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] *See* Securities Exchange Act Release No. 79778 (January 12, 2017), 82 FR 6662 (January 19, 2017) (SR–PEARL–2016–01).

Origin	Tier	Volume criteria	Per contract rebates/fees for Penny classes		Per contract rebates/fees for Non-Penny classes	
			Maker	Taker	Maker	Taker
All MIAX	1	0.00%–0.10%	($0.25)	$0.50	($0.30)	$1.05
PEARL	2	Above 0.10%–0.50%	(0.40)	0.48	(0.60)	1.03
Market	3	Above 0.50%–0.75%	(0.45)	0.47	(0.65)	1.02
Makers	4	Above 0.75%	(0.48)	0.47	(0.70)	1.02

The Exchange proposes to increase the ''Maker'' rebate amount in Tier 3 for Penny classes from ($0.45) to ($0.47). The purpose of increasing the amount of the rebate is to provide a greater incentive to Market Makers to reach Tier 3, thereby increasing the potential for executing more volume at the Exchange and consequently receiving a higher rebate. The Exchange believes that increased Maker volume by Market Makers in Penny classes will attract more liquidity to the Exchange, which in turn will benefit all market participants.

The Exchange also proposes to add a new, alternative Volume Criteria to Tier 3 based upon the total monthly volume executed by a Market Maker solely in SPY options on MIAX PEARL, expressed as a percentage of total consolidated national volume in SPY options. Pursuant to this alternative Volume Criteria, a Market Maker can now reach the Tier 3 threshold if the Market Maker's total executed monthly volume in SPY options on MIAX PEARL is above 2.0% of total consolidated national monthly volume in SPY options. To be clear, volume that is from resting liquidity (Maker) and taking liquidity (Taker) in SPY options are counted towards this alternative Volume Criteria. Accordingly, a Market Maker could now qualify for Tier 3 rebates and fees which will then be applicable to all volume executed by the Market Maker on MIAX PEARL. The two Volume Criteria available for Tier 3 are now based upon either: (a) The total monthly volume executed by the Market Maker *in all options classes on MIAX PEARL,* not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) TCV (as the denominator); or (b) the total monthly volume executed by the Market Maker *solely in SPY options on MIAX PEARL,* not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) SPY TCV (as the denominator). Once either Volume Criteria threshold in Tier 3 is reached by the Market Maker, the Tier 3 per contract rebates and fees will apply to all volume *in all options classes* executed by that Market Maker on MIAX PEARL.

In addition to modifying the MIAX PEARL Market Maker table to insert the new, alternative Volume Criteria threshold in Tier 3, in order to provide a clear explanation of the requirements for achieving that alternative Volume Criteria threshold in Tier 3, the Exchange is proposing to (i) amend the explanatory paragraph beneath the tables in Section 1(a) of the Fee Schedule, and (ii) add a new definition of ''SPY TCV'' to the Definitions Section of the Fee Schedule. The amended explanatory paragraph will clarify that (except as otherwise set forth in the Fee Schedule) the existing Volume Criteria threshold measures volume in all options classes on MIAX PEARL, and that the new, alternative Volume Criteria threshold in Tier 3 for Market Makers measures volume solely in SPY options on MIAX PEARL. The new definition of SPY TCV in the Definitions Section shall provide the following: ''SPY TCV'' means total consolidated volume in SPY calculated as the total national volume in SPY for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in SPY options).

The Exchange believes that the proposed alternative Volume Criteria threshold in Tier 3 for Market Makers will provide another opportunity for those Market Makers that concentrate their trading activity in limited options classes such as SPY options to reach a higher tier. The Exchange believes that creating this alternative Volume Criteria will extend the Tier 3 fee incentives to Market Makers that concentrate their trading activity by sending significant volume in SPY options as compared to other Market Makers that do trade in the broad range of products listed on the Exchange.

Finally, the Exchange is proposing to make a minor, non-substantive technical correction to the definition of ''TCV'' to insert the word ''of'' in between the words ''period'' and ''time.'' This word was inadvertently left out of the sentence when the definition of ''TCV'' was initially adopted, on February 6, 2017.[10]

The proposed rule change is scheduled to become operative May 1, 2017.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act,[12] in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and 6(b)(5) of the Act,[13] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed Maker rebate increase in Penny classes applicable to Market Makers that reach the Tier 3 threshold is reasonable, equitable and not unfairly discriminatory because all similarly situated Market Makers are subject to the same tiered rebates and fees and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange initially set its Maker rebates at the various volume levels based upon business determinations and an analysis of current Maker rebates and volume levels at other exchanges. For competitive and business reasons, the Exchange believes that a higher rebate to Market Makers that add liquidity in Penny classes in a higher tier will encourage Market Makers to execute more volume as a Maker in Penny classes. The Exchange believes for these reasons that offering a higher Maker rebate for transactions in Penny classes in Tier 3 for Market Makers is equitable, reasonable and not

[10] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(1) and (b)(5).

unfairly discriminatory, and thus consistent with the Act.

Furthermore, the proposed increase to the Maker rebate amount in Penny classes for Market Makers that reach Tier 3 promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest because the proposed increase in the rebate amount encourages Market Makers to send more orders to the Exchange which add liquidity in order to achieve higher thresholds and resulting higher rebates. To the extent that order flow which adds liquidity in Penny classes is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange, including sending more orders to reach higher tiers. The resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange's proposal to adopt the new, alternative Volume Criteria for Tier 3 based on SPY volume executed on the Exchange is reasonable, equitable, and not unfairly discriminatory, as it is a form of pricing based upon trading activity in a select symbol, which is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in actively traded options classes. The Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX Options''), offers enhanced pricing for transactions in options underlying certain select symbols.[14] SPY options are the most actively traded class. Other options exchanges' fee schedules distinguish by symbol and specifically assess different fees and rebates for transactions in select symbols and some exclusively for transactions in SPY options for the same market participants.[15]

The Exchange is offering an alternative Tier 3 Volume Criteria threshold based on SPY options volume in Tier 3 because, as previously mentioned, SPY options are the most actively traded options in the industry, and therefore the Exchange believes that incentivizing Market Makers that concentrate their trading activity in SPY options will consequently increase order flow sent to the Exchange, which will benefit all market participants through increased liquidity, tighter markets and order interaction.

The Exchange believes that the proposed non-substantive, technical correction will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because it will improve the readability of the rules. The proposed change does not alter the application of the rule. As such, the proposed change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the Exchange believes that the proposed rule change will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed Maker rebate increase is intended to encourage the posting of liquidity. The proposed rule change should enable the Exchange to attract and compete for order flow with other exchanges and the greater rebate for adding liquidity will encourage Market Makers to submit more order flow that adds liquidity, not removes it. The Exchange also believes that paying greater rebates may create competition among market participants. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of the enhanced pricing.

Further, the Exchange believes that the proposed alternative Volume Criteria threshold in Tier 3 based on SPY options volume applicable to Market Makers provides greater incentives to those Market Makers that concentrate their trading activity in SPY options to send additional SPY orders and creates additional opportunity for additional liquidity to the market.

The Exchange does not believe that the proposed rule change to make a technical correction to its rules will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to add additional clarity and to remedy a minor, non-substantive issue in the text of a definition in the Fee Schedule.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[16] and Rule 19b–4(f)(2)[17] 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

[14] *See* MIAX Options Fee Schedule, Section (1)(a)(iii).

[15] *See* Chicago Board Options Exchange Incorporated (''CBOE'') Fees Schedule; *see also* NASDAQ PHLX LLC (''PHLX'') Pricing Schedule, Chapter B, Section I; *see further* International Securities Exchange LLC (''ISE'') Fee Schedule, Sections I and II.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

• Send an email *to rule-comments@sec.gov.* Please include File Number SR–PEARL–2017–19 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–PEARL–2017–19. 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–PEARL–2017–19 and should be submitted on or before May 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09421 Filed 5–9–17; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80594; File No. SR–BX–2017–021]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4703 (Order Attributes)

May 4, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2017, NASDAQ BX, Inc. (''BX'' or ''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 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 proposes to amend Rule 4703 (Order Attributes) to specify the behavior of Orders with Midpoint Pegging after initial entry and posting to the Exchange Book when the market is crossed, or when there is no best bid and/or offer. The Exchange also proposes to change a reference to cancelling or rejecting orders in Rule 4703.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX proposes to amend Rule 4703 (Order Attributes) to specify the behavior of Orders with Midpoint Pegging that are cancelled or rejected when the market is crossed, or when there is no best bid and/or offer after initial entry and posting to the Exchange Book. BX also proposes to change a reference to cancelling or rejecting orders in Rule 4703.

Rule 4703(d) describes the Pegging Order Attribute, including Midpoint Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the ''Midpoint'').[3] An Order with Midpoint Pegging is not displayed.

BX recently proposed changes to Orders with Midpoint Pegging, which were approved by the SEC on November 10, 2016.[4] With this change, if the Inside Bid and Inside Offer are crossed or if there is no Insider Bid and Inside Offer, any existing Order with Midpoint Pegging would be cancelled and any new Order with Midpoint Pegging would be rejected.[5]

BX now proposes to add language to Rule 4703(d) to specify the treatment of Orders with Midpoint Pegging after initial entry and posting to the Exchange Book when the Inside Bid and Inside Offer are subsequently crossed, or if there is subsequently no Inside Bid and/or Inside Offer. Specifically, for Orders with Midpoint Pegging entered through RASH or FIX, if the Order is on the Exchange Book and subsequently the Inside Bid and Inside Offer become crossed, or if there is no Inside Bid and/or Inside Offer, the Order will be removed from the Exchange Book and will be re-entered at the new midpoint once there is a valid Inside Bid and Inside Offer that is not crossed.

As stated in the filing proposing the new Midpoint Pegging functionality, BX believes that the midpoint of a crossed market, or where there is no Inside Bid and Inside Offer, is not a clear and accurate indication of a valid price, and may produce sub-optimal execution

[3] Thus, if the Inside Bid was $11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03.

[4] *See* Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR–BX–2016–046).

[5] *Id.*

prices for members and investors.[6] Prior to this change, Orders entered through RASH or FIX would have been nevertheless repriced to the midpoint of the Inside Bid and Inside Offer if the Inside Bid and Inside Offer subsequently became crossed, or would have been cancelled if there was subsequently no Inside Bid and/or Inside Offer. BX is proposing to re-enter such Orders at the new midpoint once there is an Inside Bid and Inside Offer that is not crossed because the new Inside Bid and Inside Offer is indicative of a valid price. BX is proposing to re-enter Orders submitted through RASH or FIX because BX typically assumes a more active role in managing the order flow submitted by users of these protocols, and this functionality reflects the order flow management practices of these participants.

While BX is only proposing to adopt this re-entry functionality for Orders that are entered through RASH or FIX, the Exchange believes that it is appropriate to also modify the treatment of Orders with Midpoint Pegging entered through OUCH or FLITE where the Inside Bid and Inside Offer subsequently becomes crossed, or there is subsequently no Inside Bid and/or Inside Offer. Accordingly, BX is proposing to amend Rule 4703(d) to state that if, after an Order with Midpoint Pegging is entered through OUCH or FLITE, the Inside Bid and Inside Offer changes so that the Midpoint is lower than (higher than) the price of an Order to buy (sell), the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Pegged Order will be cancelled back to the Participant.[7]

Finally, BX is proposing to change a reference in Rule 4703 that describes the cancellation or rejection of an Order. Specifically, Rule 4703(d) currently states that, in the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price, if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will be cancelled or rejected. BX proposes to change references to cancelling or rejecting an order to ''not accepting'' an Order. Depending on the context, the reference to rejecting an order may have one of two meanings.[8] BX believes that changing references from rejecting or cancelling an Order to not accepting an Order is appropriate because the proposed language resolves the ambiguity that may arise when referring to an order rejection, and is sufficiently broad to encompass the contexts in which the concept of Order rejection or cancellation may be used.

This proposed change supplements the recently-approved changes to Orders with Midpoint Pegging, and the resulting modifications to BX systems.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed change is consistent with the Act because it supplements the recently-approved changes to Orders with Midpoint Pegging and the resulting modifications to BX systems, and reflects the Exchange's belief that the midpoint of a crossed market, or where there is no Inside Bid and/or Inside Offer, is not a clear and accurate indication of a valid price, and may produce sub-optimal execution prices for members and investors. The proposal adopts a functionality for Orders with Midpoint Pegging after initial entry and posting to the Exchange Book where the Inside Bid and Inside Offer subsequently becomes crossed, or where there is subsequently no Inside Bid and/or Inside Offer, that reflects the order flow management practices of the participants that use those protocols, *e.g.,* re-submitting such Orders that are entered through RASH or FIX, and cancelling such Orders that are submitted through OUCH or FLITE.

The proposal to replace the reference in Rule 4703 to rejecting or cancelling an order to ''not accepting'' an order is consistent with the Act because the proposed language encompasses the contexts in which the concept of order rejection or cancellation may be used and resolves any ambiguity that may arise when referring to an order rejection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change simply supplements the recently-approved changes to Orders with Midpoint Pegging and the resulting modifications to BX systems by adopting a functionality for Orders with Midpoint Pegging after initial entry and posting to the Exchange Book where the Inside Bid and Inside Offer subsequently becomes crossed, or where there is subsequently no Inside Bid and/or Inside Offer, that reflects the order flow management practices of the participants that use those protocols. Moreover, the use of Exchange Order types and attributes is voluntary, and no member is required to use any specific Order type or attribute or even to use any Exchange Order type or attribute or any Exchange functionality at all. If an Exchange member believes for any reason that the proposed rule change will be detrimental, that perceived detriment can be avoided by choosing not to enter or interact with the Order type modified by this proposed rule change. Finally, the proposal will apply equally to all Orders that meet its criteria.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

[6] *See* Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR–BX–2016–046).

[7] BX is proposing to change the reference in this sentence from NBBO to Inside Bid and Inside Offer to make this sentence more consistent with the rest of Rule 4703, which uses the concept of the Inside Bid and Insider Offer rather than the NBBO.

[8] Specifically, an Order may be referred to as ''rejected'' if it is not initially accepted by the customer-facing BX interface. Alternatively, after an Order has been initially accepted by the customer-facing interface, and is being transmitted from one BX interface to another, it may be ''rejected'' if the Order is not accepted by another part of the BX system for various reasons.

[9] *See* Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR–BX–2016–046). BX initially proposed to implement the new functionality for Orders with Midpoint Pegging on November 21, 2016. *See* Equity Trader Alert #2016–291. However, following testing, BX has decided to delay the implementation of this new functionality to provide additional time for systems testing. The new functionality shall be implemented no later than May 31, 2017. *See* Securities Exchange Act Release No. 80046 (February 15, 2017), 82 FR 11385 (February 22, 2017) (SR–BX–2017–008) (extending the implementation date to no later than March 31, 2017); Securities Exchange Act Release No. 80393 (April 6, 2017), 82 FR 17711 (April 12, 2017) (SR–BX–2017–018) (extending the implementation date to no later than May 31, 2017).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that the proposal supplements the recently-approved changes to Orders with Midpoint Pegging, and that it intends to implement these previously-approved changes shortly (and no later than May 31, 2017).[15] Waiver of the 30-day operative delay would allow the Exchange to implement the previously-approved changes concurrently with the supplemental changes in this proposal. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[16]

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 to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2017–021 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–BX–2017–021. 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–BX–2017–021 and should be submitted on or before May 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

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[12] 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 9.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80593; File No. SR–NASDAQ–2017–042]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes)

May 4, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to specify the behavior of Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging after initial entry and posting to the Nasdaq Book when the market is crossed, or when there is no best bid and/or offer. Nasdaq also proposes to change certain references to cancelling or rejecting orders in Rule 4702 and Rule 4703.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to specify the behavior of Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging that are cancelled or rejected when the market is crossed, or when there is no best bid and/or offer after initial entry and posting to the Nasdaq Book. Nasdaq also proposes to change certain references to cancelling or rejecting orders in Rule 4702 and Rule 4703.

Rule 4702(b)(5) describes the Midpoint Peg Post-Only Order. Among other things, the Rule states that the Midpoint Peg Post-Only Order is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the National Best Bid and Offer (''NBBO'') and that will execute upon entry only in circumstances where economically beneficial to the party entering the Order. The Midpoint Peg Post-Only Order is available during Market Hours only.

Rule 4703(d) describes the Pegging Order Attribute, including Midpoint Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the ''Midpoint'').[3] An Order with Midpoint Pegging is not displayed.

Nasdaq recently proposed changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging, which were approved by the SEC on November 10, 2016.[4] With this change, if the NBBO is crossed or if there is no NBBO, any existing Midpoint Peg Post-Only Order would be cancelled and any new Midpoint Peg Post-Only Order would be rejected. Similarly, if the Inside Bid and Inside Offer are crossed, any existing Order with Midpoint Pegging would be cancelled and any new Order with Midpoint Pegging would be rejected.[5]

Nasdaq now proposes to add language to Rule 4702(b)(5)(B) to specify the treatment of a Midpoint Peg Post-Only Order after initial entry and posting to the Nasdaq Book when the NBBO is subsequently crossed, or when there is subsequently no NBBO. Specifically, for Midpoint Peg Post-Only Orders entered through RASH, QIX or FIX, if the Order is on the Nasdaq Book and subsequently the NBBO is crossed, or if there is subsequently no NBBO, the Order will be removed from the Nasdaq Book and will be re-entered at the new midpoint once there is a valid NBBO that is not crossed.

Similarly, Nasdaq proposes to add language to Rule 4703(d) to specify the treatment of Orders with Midpoint Pegging after initial entry and posting to the Nasdaq Book when the Inside Bid and Inside Offer are subsequently crossed, or if there is subsequently no Inside Bid and/or Inside Offer. Specifically, for Orders with Midpoint Pegging entered through RASH, QIX or FIX, if the Order is on the Nasdaq Book and subsequently the Inside Bid and Inside Offer become crossed, or if there is no Inside Bid and/or Inside Offer, the Order will be removed from the Nasdaq Book and will be re-entered at the new midpoint once there is a valid Inside Bid and Inside Offer that is not crossed.

As stated in the filing proposing the new functionality for Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging, Nasdaq believes that the midpoint of a crossed market, or where there is no NBBO, is not a clear and accurate indication of a valid price, and may produce sub-optimal execution prices for members and investors.[6] Prior to this change, Midpoint Peg Post-Only Orders entered through RASH, QIX or FIX would have been nevertheless repriced to the midpoint of the NBBO if the NBBO subsequently became crossed, or would have been cancelled if there was subsequently no NBBO. Nasdaq is proposing to re-enter such Orders at the new midpoint once there is a NBBO that is not crossed because the new NBBO is indicative of a valid price.

Similarly, prior to this change, Orders with Midpoint Pegging entered through RASH, QIX or FIX would have been nevertheless repriced to the midpoint of the Inside Bid and Inside Offer if the Inside Bid and Inside Offer subsequently became crossed, or would have been cancelled if there was subsequently no Inside Bid and/or Inside Offer. As with the change to Midpoint Peg Post-Only Orders, Nasdaq is therefore proposing to re-enter such Orders at the new midpoint once there is an Inside Bid and Inside Offer that is not crossed because the new Inside Bid and Inside Offer is indicative of a valid price. Nasdaq is proposing to re-enter Orders submitted through RASH, QIX or FIX because Nasdaq typically assumes a more active role in managing the order flow submitted by users of these protocols, and this functionality reflects the order flow management practices of these participants.

While Nasdaq is only proposing to adopt this re-entry functionality for Orders that are entered through RASH, QIX or FIX, Nasdaq believes that it is appropriate to also modify the treatment of Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging entered through OUCH or FLITE where the NBBO subsequently becomes crossed, or there is subsequently no NBBO or Inside Bid and/or Offer. Accordingly, Nasdaq is also proposing to amend Rule 4702(b)(5)(B) to state that if, after a Midpoint Peg Post-Only Order entered through OUCH or FLITE is posted to the Nasdaq Book, the NBBO changes so that the NBBO is crossed, or there is no NBBO, the Midpoint Peg Post-Only Order will be cancelled back to the Participant. Similarly, Nasdaq will amend Rule 4703(d) to state that if, after an Order with Midpoint Pegging is entered through OUCH or FLITE, the Inside Bid and Inside Offer changes so that the Midpoint is lower than (higher than) the price of an Order to buy (sell), the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Pegged Order will be cancelled back to the Participant.[7]

Finally, Nasdaq is proposing to change certain instances in Rule 4702 and Rule 4703 that describe the cancellation or rejection of an Order. For example, Rule 4702(b)(5)(A) currently states that, if the NBBO is locked when a Midpoint Peg Post-Only Order is entered, the Midpoint Peg Post-Only Order will be priced at the locking price, and if the NBBO is crossed or if there is no NBBO, the Order will be cancelled or rejected. Rule 4702(b)(5)(A) also provides that a Midpoint Peg Post-Only Order that would be assigned a price of $1 or less per share will be rejected or cancelled, as applicable. Similarly, Rule 4703(d) states that, in the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price, and if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will be cancelled or rejected.

Nasdaq proposes to change references to cancelling or rejecting an order to ''not accepting'' an Order. Depending on

[3] Thus, if the Inside Bid was $11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03.

[4] *See* Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR–NASDAQ–2016–111).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 78908 (September 22, 2016), 81 FR 66702 (September 28, 2016) (SR–NASDAQ–2016–111).

[7] Nasdaq is proposing to change the reference in this sentence from NBBO to Inside Bid and Inside Offer to make this sentence more consistent with the rest of Rule 4703, which uses the concept of the Inside Bid and Insider Offer rather than the NBBO.

the context, the reference to rejecting an order may have one of two meanings.[8] Nasdaq believes that changing references from rejecting or cancelling an Order to not accepting an Order is appropriate because the proposed language resolves the ambiguity that may arise when referring to an Order rejection, and is sufficiently broad to encompass the contexts in which the concept of Order rejection or cancellation may be used.

This proposed change supplements the recently-approved changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging, and the resulting modifications to Nasdaq systems.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposed change is consistent with the Act because it supplements the recently-approved changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging and the resulting modifications to Nasdaq systems, and reflects the Exchange's belief that the midpoint of a crossed market, or where there is no NBBO or Inside Bid and/or Inside Offer, is not a clear and accurate indication of a valid price, and may produce sub-optimal execution prices for members and investors. The proposal adopts a functionality for Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging after initial entry and posting to the Nasdaq Book where the NBBO or Inside Bid and Inside Offer subsequently becomes crossed, or where there is subsequently no NBBO or Inside Bid and/or Inside Offer, that reflects the order flow management practices of the participants that use those protocols, *e.g.,* re-submitting such Orders that are entered through RASH, QIX or FIX, and cancelling such Orders that are submitted through OUCH or FLITE.

The proposal to replace certain references to rejecting or cancelling an order to ''not accepting'' an order is consistent with the Act because the proposed language encompasses the contexts in which the concept of order rejection or cancellation may be used and resolves any ambiguity that may arise when referring to an order rejection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change supplements the recently-approved changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging and the resulting modifications to Nasdaq systems by adopting a functionality for Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging after initial entry and posting to the Nasdaq Book where the NBBO subsequently becomes crossed, or where there is subsequently no NBBO or Inside Bid and/or Inside Offer, that reflects the order flow management practices of the participants that use those protocols. Moreover, the use of Exchange Order types and attributes is voluntary, and no member is required to use any specific Order type or attribute or even to use any Exchange Order type or attribute or any Exchange functionality at all. If an Exchange member believes for any reason that the proposed rule change will be detrimental, that perceived detriment can be avoided by choosing not to enter or interact with the Order type modified by this proposed rule change. Finally, the proposal will apply equally to all Orders that meet its criteria.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that the proposal supplements the recently-approved changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging, and that it intends to implement these previously-approved changes shortly (and no later than May 31, 2017).[15] Waiver of the 30-day operative delay would allow the Exchange to implement the previously-approved changes concurrently with the supplemental changes in this proposal. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[16]

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

[8] Specifically, an Order may be referred to as ''rejected'' if it is not initially accepted by the customer-facing Nasdaq interface. Alternatively, after an Order has been initially accepted by the customer-facing interface, and is being transmitted from one Nasdaq interface to another, it may be ''rejected'' if the Order is not accepted by another part of the Nasdaq system for various reasons.

[9] *See* Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR–NASDAQ–2016–111). Nasdaq initially proposed to implement the new functionality for Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging on November 21, 2016. *See* Equity Trader Alert #2016–291. However, following testing, Nasdaq has decided to delay the implementation of this new functionality to provide additional time for systems testing. The new functionality shall be implemented no later than May 31, 2017. *See* Securities Exchange Act Release No. 80045 (February 15, 2017), 82 FR 11389 (February 22, 2017) (SR–NASDAQ–2017–013) (extending the implementation date to no later than March 31, 2017); Securities Exchange Act Release No. 80391 (April 6, 2017), 82 FR 17714 (April 12, 2017) (SR–NASDAQ–2017–034) (extending the implementation date to no later than May 31, 2017).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 9.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–042 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–NASDAQ–2017–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–042 and should be submitted on or before May 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09422 Filed 5–9–17; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80597; File No. SR–NSCC–2017–001]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Describe the Illiquid Charge That May Be Imposed on Members

May 4, 2017.

On March 13, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2017–001, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on March 22, 2017.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposed Rule Change

NSCC proposes to amend its Rules & Procedures (''Rules'')[4] in order to provide transparency to an existing margin charge (*i.e.,* the ''Illiquid Charge'') and to codify NSCC's current practices with respect to the assessment and collection of the Illiquid Charge, as described below.[5] Separately, NSCC also proposes to amend Procedure XV of the Rules to define the ''Market Maker Domination Charge,'' also described below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80260 (March 16, 2017), 82 FR 14781 (March 22, 2017) (SR–NSCC–2017–001) (''Notice'').

[4] *Available at http://www.dtcc.com/en/legal/rules-and-procedures.*

[5] Specifically, NSCC proposes to amend Rule 1 (Definitions and Descriptions) to add certain defined terms associated with the Illiquid Charge, and amend Procedure XV (Clearing Fund Formula and Other Matters) to clarify the circumstances and manner in which NSCC calculates and imposes the Illiquid Charge.

A. The Illiquid Charge

NSCC states that it designed the Illiquid Charge to mitigate the market risk that NSCC faces when liquidating securities that lack marketability, based on insufficient access to a trading venue, and may have low and volatile share prices (''Illiquid Securities''),[6] following a member default.[7] In such a situation, the liquidation of Illiquid Securities could be difficult or delayed due to a lack of interest in the securities or limitations on the share price of the securities.[8]

NSCC calculates an Illiquid Charge for each net unsettled position in an Illiquid Security (*i.e.,* an ''Illiquid Position'') that exceeds applicable volume thresholds. Following is a description of (i) the volume thresholds that must be met in order for the Illiquid Charge to be applied, (ii) the methodology for calculating the Illiquid Charge, and (iii) the exceptions to and application of the Illiquid Charge.

1. Net Buy Illiquid Positions and Net Sell Illiquid Positions

Depending on whether the Illiquid Positon is a net buy or a net sell position, NSCC applies different volume thresholds and calculation methods for establishing the Illiquid Charge. The purpose of this is to address the different risk profiles presented by such net buy and net sell positions.[9]

a. Net Buy Illiquid Positions

The Illiquid Charge only applies to a member's net buy Illiquid Position if the position meets a specific volume threshold. For an NSCC member with a strong credit rating, the net buy Illiquid Position must meet a volume threshold of greater than 100 million shares.[10] For

[6] More specifically, NSCC proposes to define Illiquid Security to mean a security, other than a family-issued security as defined in Procedure XV of the Rules, that either (i) is not traded on or subject to the rules of a national securities exchange registered under the Act, or (ii) is an OTC Bulletin Board or OTC Link issue.

[7] Notice, 82 FR at 14781.

[8] *Id.*

[9] In the event of a Member default, NSCC would complete the liquidation of an Illiquid Position by buying or selling that position into the market. Notice, 82 FR at 14783. According to NSCC, the different risk profiles of net buy positions and net sell positions are based on, in part, the difference in the potential responsiveness of prices change to quantity that may occur when NSCC is liquidating a net buy position in an Illiquid Security, compared to when it is liquidating a net sell position in an Illiquid Security. *Id.*

[10] Credit ratings are established through NSCC's credit risk rating matrix (''CRRM''). *See* Rule 2B, Section 4, *supra* note 4; *see also* Securities Exchange Act Release No. 80381 (April 5, 2017), 82 FR 17475 (April 11, 2017) (SR–NSCC–2017–002) (NSCC proposed rule change to modify the CRRM

Continued

an NSCC member with a weak credit rating, the net buy Illiquid Positon must meet a volume threshold of greater than 10 million shares.[11] If the volume threshold is met, the net buy position in the Illiquid Securities is considered an Illiquid Position and is subject to the Illiquid Charge.

In addition, the Illiquid Charge only applies to net buy Illiquid Positions in Illiquid Securities that have a share price below $0.01. If a transaction in any security, including an Illiquid Security, with a share price below $0.01 is entered into NSCC's Continuous Net Settlement system or Balance Order Accounting Operation,[12] NSCC rounds up the price of the security to $0.01. Therefore, when a member holds a buy position in a sub-penny security, NSCC records the position's value at a higher price than the actual per share price of the position. The difference may reduce the member's required fund deposit,[13] particularly for a large quantity of buy positions in a sub-penny security.

To address this risk, NSCC states that it calculates the Illiquid Charge for net buy Illiquid Positions by multiplying the aggregate quantity of shares in such positions by $0.01.[14] NSCC assesses and collects the resulting amounts as the Illiquid Charge component of affected members' required fund deposit.[15]

b. Net Sell Illiquid Positions

The Illiquid Charge only applies to a member's net sell Illiquid Position if the position meets a specific volume threshold. To determine the volume threshold, NSCC first offsets the quantity of shares in the member's net sell Illiquid Position against the number of shares of the same Illiquid Security held by the member at The Depository Trust Company (''DTC inventory offset'').[16] Next, NSCC determines the applicable volume threshold for the net sell Illiquid Position based on (i) the percentage of the average daily volume (''ADV'')[17] of the underlying Illiquid Securities, (ii) the member's credit rating, and, in some cases, (iii) the member's excess net capital (''ENC''). More specifically, for an NSCC member with a strong credit rating (*i.e.,* a CRRM rating of 1–4), the net sell Illiquid Position must meet a volume threshold of 1 million shares, when the net sell Illiquid Position is greater than or equal to 25 percent of the ADV. For an NSCC member with a weak credit rating (*i.e.,* a CRRM rating of 5–7), the net sell Illiquid Position must meet a volume threshold of 500,000 shares, when the net sell Illiquid Position is greater than or equal to 25 percent of the ADV and the member's ENC is *greater than* $10 million. However, the net sell Illiquid Position need only meet a volume threshold of 100,000 shares, if an NSCC member has a weak credit rating (*i.e.,* a CRRM rating of 5–7), and the net sell Illiquid Position is greater than or equal to 25 percent of the ADV, and the member's ENC is *less than or equal to* $10 million. A member may not meet the applicable volume thresholds after applying the DTC inventory offset, and, therefore, would not be subject to the Illiquid Charge.

If the applicable volume threshold is met, the net sell Illiquid Position is subject to the Illiquid Charge. To calculate the Illiquid Charge for net sell Illiquid Positions, NSCC considers the Current Market Price[18] of the subject Illiquid Security and the quantity of shares in such position compared to the ADV of that Illiquid Security:

(A) If the Illiquid Position has a Current Market Price equal to or less than $1.00, NSCC calculates the Illiquid Charge as the product of the aggregate quantity of shares in the Illiquid Position and either (i) the highest market price of the Illiquid Security during the preceding 20 trading days (''One Month High Price''),[19] or (ii) the Current Market Price of the Illiquid Security multiplied by a factor between 2 and 10, depending on the market price.[20]

(B) If the Illiquid Position has a Current Market Price that is greater than $1.00, NSCC calculates the Illiquid Charge as the product of the aggregate quantity of shares in the Illiquid Position and either (i) the One Month High Price, or (ii) the Current Market Price of the Illiquid Security rounded up to the next $0.50 increment.

In determining whether to use the One Month High Price or the Current Market Price of the Illiquid Security to calculate the Illiquid Charge, NSCC compares the percentage of the ADV to the share quantity in the Illiquid Position. If the quantity of shares in the Illiquid Position is less than 100 percent of the ADV, but greater than or equal to 25 percent of the ADV, then the calculation uses the lesser of the One Month High Price or the Current Market Price of the Illiquid Securities (rounded up to the next $0.50 increment, if applicable). If the quantity of shares in the Illiquid Position is greater than or equal to 100 percent of the ADV, then the calculation uses the greater of the One Month High Price or the Current Market Price of the Illiquid Security (rounded up to the next $0.50 increment, if applicable).

Furthermore, depending on the result of the calculation described above, the Illiquid Charge would remain subject to a minimum price per share, which would not be less than $0.01. Therefore, when calculating the Illiquid Charge, the One Month High Price or the Current Market Price of the Illiquid Security is substituted by the minimum price per share if the One Month High Price or the Current Market Price, as applicable, is below the minimum price per share.

2. Exceptions and Exclusions From the Illiquid Charge

NSCC states that, in order to avoid duplicate margin charges, it does not apply the Illiquid Charge when a greater Market Maker Domination Charge (''MMDC'') charge is also applicable to the same Illiquid Positions.[21] The MMDC applies to a position in a security that is greater than 40 percent of the overall unsettled long position in

formula). The CRRM applies a 7-point rating system, with ''1'' being the strongest rating and ''7'' being the weakest rating. *Id.* A CRRM credit rating of 1–4 would be a stronger credit rating, while a CRRM credit rating of 5–7 would be a weaker credit rating. *Id.*

[11] Members with a stronger CRRM rating would be assessed an Illiquid Charge on a net buy Illiquid Position at a higher volume threshold because NSCC believes these members pose a lower risk of default. Notice, 82 FR at 14783. Meanwhile, members with a weaker CRRM rating present a heightened credit risk to NSCC or have demonstrated a higher risk related to their ability to meet settlement. *Id.*

[12] NSCC processed guaranteed trades through the Continuous Net Settlement system if the underlying security is freely transferable. NSCC processed guaranteed trades through the Balance Order Accounting Operation when the underlying security is subject to a restriction such as Reg. S or Reg. 144A. *See* Rule 1, *supra* note 4.

[13] The required fund deposit is a mutualized deposit made by a member to NSCC to be used in the event of a member default. *See* Rule 4, Section 1, *supra* note 4.

[14] Notice, 82 FR at 14783.

[15] *Id.*

[16] DTC is a central depository where NSCC-traded securities are held. The DTC inventory offset does not apply to members with the weakest CRRM rating (*i.e.,* a 7). *See* Rule 2B, Section 4, *supra* note 4; Notice, 82 FR at 14783.

[17] NSCC states that ''ADV'' is the average daily volume over the most recent twenty business days as determined by NSCC. Notice, 82 FR at 14783.

[18] The term ''Current Market Price'' is defined in Rule 1 and is generally the most recent closing price of the security. *Supra* note 4.

[19] The ''One Month High Price'' means the highest of all NSCC observed market prices over the most recent 20 trading day period for purposes of the Illiquid Charge. Notice, 82 FR at 14783.

[20] Generally, the factor applied would be 10 where the market price is less than $0.10; the factor applied would be 5 where the market price is between $0.10 and $0.20; the factor applied would be 2 where the market price is between $0.20 and $1.00. Where the market price is greater than $1.00, a $0.50 price increment is applied. *Id.*

[21] Notice, 82 FR at 14784.

that security, if such position is held by the Market Maker in that security.[22]

Similarly, NSCC proposes to exclude family-issued securities from the definition of ''Illiquid Security.'' [23] NSCC believes that family-issued securities have a different risk profile than other illiquid securities that is better addressed through a separate margin charge.

B. The Market Maker Domination Charge Change

Separate from the proposed changes related to the Illiquid Charge, NSCC would amend the Rules to define the term ''Market Maker Domination Charge'' in Procedure XV, Section I(A)(1)(d) of the Rules and use the defined term in Section I(A)(2)(c) of the Rules. NSCC believes that this change would improve clarity and create ease of reference in the Rules.[24]

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [25] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act and Rules 17Ad–22(e)(1), (e)(4)(i), and (e)(6)(v) [26] under the Act, as discussed below.

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act, requires, in part, that NSCC's Rules be designed to assure the safeguarding of securities and funds that are within the custody or control of the clearing agency and to promote the prompt and accurate clearance and settlement of securities transactions.[27] As described above, the Illiquid Charge could help protect NSCC from potential losses in the event that a member defaults. Specifically, the Illiquid Charge is calculated and collected to help mitigate the potential costs associated with NSCC's potential difficulties or delays in liquidating Illiquid Securities, due to the illiquid nature of such securities, following a member default. By enabling NSCC to better assess and collect required fund deposits in consideration of members' Illiquid Positions, the Commission believes that the proposed changes related to the Illiquid Charge would help promote the safeguarding of securities and funds that are within NSCC's custody or control, consistent with the requirements of Section 17(b)(3)(F) of the Act.[28]

The Commission also finds that the proposed rule change pertaining to the Market Maker Domination Charge is consistent with Section 17A(b)(3)(F) of the Act.[29] As described above, NSCC proposes to add to its Rules a definition of the Market Maker Domination Charge. This change could make the Rules more clear for members that rely on them, enabling members to more easily and promptly rely on the Rules, which helpssupport NSCC's prompt and accurate clearance and settlement of securities transactions made by members. Therefore, the Commission believes that the proposed rule change related to the Market Maker Domination Charge is consistent with Section 17A(b)(3)(F) of the Act.[30]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) under the Act requires, in part, a clearing agency to ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]rovide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities.'' [31] As described above, NSCC proposes to define the term ''Market Maker Domination Charge'' Procedure XV, Section I(A)(1)(d) of the Rules.[32] The Commission believes that this proposed change could make the Rules more clear and transparent for members that rely on them, consistent with Rule 17Ad–22(e)(1).

C. Consistency With Rule 17Ad–22(e)(4)(i)

Rule 17Ad–22(e)(4)(i) under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to members and those exposures arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each member fully with a high degree of confidence.[33] As described above, the Illiquid Charge is calculated and imposed based on the amount and nature of Illiquid Securities in each member's portfolio, and in consideration of the members' credit rating. In doing so, the Illiquid Charge is designed to help obtain sufficient financial resources to help cover the credit exposures, with a high degree of confidence, presented by members that maintain Illiquid Positions. Therefore, the Commission believes that the proposed changes related to the Illiquid Charge are consistent with Rule 17Ad–22(e)(4)(i) under the Act.[34]

D. Consistency With Rule 17Ad–22(e)(6)(v)

Rule 17Ad–22(e)(6)(v) under the Act requires, in part, NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its members by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.[35] As described above, the Illiquid Charge is a component of the required fund deposits that NSCC calculates and collects using a risk-based margin methodology that is designed to help maintain the coverage of NSCC's credit exposures to its members at a confidence level of at least 99 percent. The Illiquid Charge is calculated to address the unique risk characteristics presented by Illiquid Securities, specifically their lack of marketability and their low and volatile share prices, and in consideration of the credit rating of the member holding the Illiquid Position. Therefore, the Commission believes that the proposed changes related to the Illiquid Charge are consistent with Rule 17Ad–22(e)(6)(v) under the Act.[36]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of

[22] For purposes of calculating the MMDC, the overall unsettled long position is calculated as the sum of each member's net long position. Application and calculation of the MMDC is described in Procedure XV of the Rules, Sections I(A)(1)(d) and I(A)(2)(c). *Supra* note 4.

[23] NSCC defines family-issued securities as securities that were issued by either that member or by an affiliate of that member. Procedure XV, Section I(B)(1), *supra* note 4.

[24] *Supra* note 4.

[25] 15 U.S.C. 78s(b)(2)(C).

[26] 15 U.S.C. 78q–1(b)(3)(F); 17 CFR 240.17Ad–22(e)(1); 17 CFR 240.17Ad–22(e)(4)(i); 17 CFR 240.17Ad–22(e)(6).

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] 17 CFR 240.17Ad–22(e)(1).

[32] *Supra* note 4.

[33] 17 CFR 240.17Ad–22(e)(4)(i).

[34] *Id.*

[35] 17 CFR 240.17Ad–22(e)(6)(v).

[36] *Id.*

Section 17A of the Act[37] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–NSCC–2017–001 be, and hereby is, *Approved.*[38]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09425 Filed 5–9–17; 8:45 am]

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[37] 15 U.S.C. 78q–1.

[38] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80595; File No. SR–CBOE–2017–035]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Compression Forums

May 4, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2017, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes changes to Rule 6.56 (Compression Forums) to: (1) Make all existing positions in series of S&P 500® Index (''SPX'') options[5] eligible to be identified as compression-list positions (and therefore eligible for a fee rebate if closed in open outcry in a compression forum); (2) change the way in which the Exchange will publish its compression-list positions file; (3) amend the rules with respect to requirements for solicited transactions executed through a compression forum; and (4) clarify additional portions of the rule text. The Exchange's proposal is intended to make it easier for TPHs to efficiently close positions in series of SPX options at the end of each calendar month in order to mitigate the effects of capital constraints on market participants and help ensure continued depth of liquidity in the SPX options market.

Background

SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[6] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[7]

Subject to certain exceptions, CBOE Clearing Trading Permit Holders (''CTPHs'')[8] are subject to the Net Capital Rules. However, a subset of CTPHs are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S. bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd–Frank Wall Street Reform and Consumer Protection Act.[9] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[10] Generally, these rules impose higher minimum capital requirements, more restrictive capital eligibility standards, and higher asset risk weights than were previously mandated for CTPHs that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not permit deductions for hedged securities or offsetting options positions.[11] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, CTPHs must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules. The impact of these regulatory capital rules are compounded

[5] Including groups of series with both ticker symbols SPX and SPXW.

[6] 17 CFR 240.15c3–1.

[7] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.* vertical spreads).

[8] All CBOE CTPHs must also be clearing members of The Options Clearing Corporation (''OCC'').

[9] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[10] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[11] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by market-makers and institutions, are risk-limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined. Whereas regulatory capital requirements have historically reflected the risk-limited nature of carrying offsetting positions, these positions may now be subject to higher regulatory capital requirements. Various factors, including administration costs; transaction fees; and limited market demand or counterparty interest, however, may discourage market participants from closing these positions even though many market participants likely would prefer to close the positions rather than carry them to expiration.

in the SPX options market due to the large notional value of SPX contracts.

The Exchange believes that these higher regulatory capital requirements have the potential to impact liquidity in the SPX options market by limiting the amount of capital CTPHs can allocate to their clients' transactions. Specifically, the rules may cause CTPHs to impose stricter position limits on their client clearing members, which include CBOE Market-Makers. Such position limits may impact the liquidity Market-Makers might supply in the SPX market, and this impact may be compounded when a CTPH has multiple Market-Maker client accounts, each having largely risk-neutral portfolio holdings.[12] The Exchange believes that permitting Market-Makers and Floor Brokers (for their own proprietary accounts or for the account of another on an agency basis) to efficiently close existing SPX options positions through modified open outcry trading procedures on the Exchange floor may assist CTPHs and TPHs to address bank regulatory capital requirements and would likely have a beneficial effect on continued liquidity in the SPX options market without adversely affecting market quality.

In order to mitigate the potential negative effects of these additional bank regulatory capital requirements and foster continued liquidity in the SPX options market in a manner consistent with the requirements, the Exchange recently adopted Rule 6.56 pursuant to which TPHs can reduce (or ''compress'') existing positions in SPX at the end of each calendar month more efficiently through trading in an open outcry compression forum.[13] The Exchange believes that making available these periodic trading forums, which allow for closing transactions in SPX options series to occur at reduced transaction fees likely contributes to additional liquidity and continued competitiveness in the SPX market and promotes more efficient capital deployment in light of bank regulatory capital requirements.

Under current Rule 6.56, on the final three business days of each calendar month, the Exchange holds compression forums in the SPX trading crowd. Beforehand, in order to facilitate TPHs finding counterparty offsets against which they can trade closing positions, currently, TPHs may submit lists of existing SPX positions (with either a required capital charge equal to the minimum capital charge under the risk-based haircut calculator provided by the OCC or comprised of option series with a delta of ten (10) or less) to the Exchange that they wish to close during a compression forum. The Exchange then aggregates these positions into a single list containing the series in which opposite (long/short) interest was submitted to the Exchange. Prior to the open of trading on the third-to-last business day of each calendar month (*i.e.* the first day of the month on which a compression forum is held), the Exchange makes available to all TPHs on its Web site the aggregate two-sided list of compression-list positions for those series (''compression-list positions file''). In addition, TPHs that submit compression positions list to the Exchange receive a compression-list positions file containing the names of the TPHs that contributed to the file, including contact information for each TPH's designated point of contact. This list does not identify the specific positions that any TPH has submitted to the Exchange.

The Exchange then holds open outcry ''compression forums'' in which all TPHs may participate whether or not they submitted positions for inclusion in the compression-list position file. Currently, trades executed during compression forums are subject to trading rules applicable to trading in SPX during Regular Trading Hours, including manner of bids and offers and allocation and priority rules, except: (1) Only closing transactions in SPX options (including compression-list positions) may be executed during a compression forum; and (2) the minimum increment for each series is $0.01 during a compression forum. TPHs that trade positions previously submitted to the Exchange on a compression list may then take advantage of the compression-list position fee rebate on portions of a transaction that involve their compression-list positions, which are executed through a compression forum.

The Exchange proposes to amend Rule 6.56 to enhance the effectiveness and utility of its compression forums process for market participants. Based on research, past compression forum results, and anecdotal evidence, the Exchange believes that the number of SPX contracts closed in past compression forums is only a small fraction of the number of SPX contracts that TPHs would like to close out because of bank regulatory capital-related restraints. This is due, at least in part, to TPHs submitting compression-list positions that include fewer than the total SPX contracts they would like to close. These limited TPH compression-list positions yield fewer series in which the Exchange has received two-sided interest (for publication in the compression-list positions file), and only a fraction of that two-sided interest has been closed out during previous compression forums.[14] The Exchange believes that TPHs are not taking advantage of the compression forum process, in part, because the process is too limited in terms of which positions have been determined to be eligible compression-list positions (and therefore eligible for the related fee rebate). Accordingly, the Exchange proposes certain amendments to Rule 6.56 to increase the efficiency and effectiveness of the compression forums process.

Proposal

The Exchange proposes to amend Rule 6.56 to remove the requirement that compression-list positions must be positions with either: (1) A required capital charge equal to the minimum capital charge under the risk-based haircut calculator provided by the OCC or (2) comprised of option series with a delta of ten (10) or less. In addition, the Exchange proposes to change the manner in which it publishes the compression-list positions file and amend the rules with respect to requirements for solicited transactions executed through a compression forum. Finally, the Exchange proposes to make certain non-substantive changes to clarify the text of Rule 6.56. The Exchange believes that these proposed amendments to Rule 6.56 would enhance the effectiveness and utility of its compression forums process.

Under current Rule 6.56(a)(1), prior to the close of Regular Trading Hours on the fourth to last business day of each calendar month, in a manner and format determined by the Exchange, a TPH may provide the Exchange with a list of open SPX options positions with either a required capital charge equal to the minimum capital charge under the risk-based haircut calculator provided by the OCC or comprised of option series with a delta of ten (10) or less that it would like to close during the compression forum for that calendar month (''compression-list positions''). Compression-list positions may consist

[12] Several TPHs have indicated to the Exchange that the heightened bank regulatory requirements could impact their ability to provide consistent liquidity in the SPX options market unless they are able to efficiently close their positions in SPX.

[13] *See* Securities Exchange Act Release No. 79610 (December 20, 2016), 81 FR 95219 (December 27, 2016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Compression of S&P 500(R) Index Options Positions) (SR–CBOE–2016–090).

[14] In the months since the adoption of Rule 6.56, of the compression-list positions submitted to the Exchange, less than 16% had offsetting interest, and of those positions, less than 10% were actually closed in transactions through a compression forum.

of multi-legged positions in series of SPX options, which satisfy these conditions. In turn, the Exchange rebates transaction fees for trading these positions against other closing SPX options positions in a compression forum so long as a rebate request form is submitted by the TPH in compliance with the parameters outlined in the Exchange's Fees Schedule.[15]

The Exchange proposes to amend the definition of compression-list positions to include any SPX option position submitted to the Exchange pursuant to Rule 6.56(a)(1) that a TPH wishes to close through a compression forum. Specifically, the Exchange proposes to remove the text from paragraph (a)(1) of Rule 6.56 that requires a compression-list position to either have a required capital charge equal to the minimum capital charge under the risk-based haircut calculator provided by the OCC or be comprised of an option series with a delta of ten (10) or less. Accordingly, the proposed rule text of the first sentence of Rule 6.56(a)(1) would provide that prior to the close of Regular Trading Hours on the fourth to last business day of each calendar month, in a manner and format determined by the Exchange, a TPH may provide the Exchange with a list of open SPX options positions that it would like to close through the compression forum for that calendar month (''compression-list positions'').

This proposed change would also obviate the need for the provision that compression-list positions may consist of multi-legged positions in series of SPX options, which satisfy the conditions set forth in paragraph (a)(1) of Rule 6.56. Under the current rule, TPHs may use offsetting positions to create a multi-leg position with a required capital charge equal to the minimum capital charge under the risk-based haircut calculator provided by the OCC. If the requirement that the position have a required capital charge equal to the minimum capital charge under the risk-based haircut calculator provided by the OCC were eliminated, then there would be no need to submit a multi-leg position to make it qualify as a compression-list position under Rule 6.56(a)(1); any leg of any SPX position on its own would qualify without exception. Thus, under the proposed rule, TPHs may simply submit a list of single-leg positions to the Exchange in order to qualify for a rebate of the fees for any associated transactions.

The Exchange believes that the proposed change would encourage more market participants to close out SPX positions through compression forums and help ensure continued depth of liquidity in the SPX options market. Based on the Exchange's understanding of the number of SPX contracts that TPHs would like to close out each month for bank regulatory capital-related purposes, the comparatively small numbers of contracts submitted to the Exchange on average per month as compression-list positions, and the even smaller number of SPX contracts closed during compression forums, the Exchange believes that the definition of compression-list positions ought be expanded to include any open SPX options positions that a TPH wishes to close during a compression forum (and thus be eligible for a fee rebate). Although the parameters in current Rule 6.56(a)(1) were put in place as a mechanism for market participants to close out-of-the-money (''OTM'') positions that might be held until expiration because of the cost of trading out of them and despite the large capital charges associated with such positions, the Exchange believes that market participants and, in particular, Market-Makers have a need for a mechanism that allows them to easily close other less deep OTM SPX positions and even in-the-money (''ITM'') positions at month's end in order to free up capital that could then be deployed to provide additional liquidity in the SPX options market.

The Exchange also proposes to make changes to paragraph (a)(2) of Rule 6.56 regarding the dissemination of the compression-list positions file. Under current Rule 6.56, prior to the open of Regular Trading Hours on the third to last business day of each calendar month, the Exchange makes available to all TPHs an aggregate two-sided (long/short) list including each series for which both long and short positions have been submitted to the Exchange pursuant to paragraph (a)(1) and the size on each side in each of those series (''compression-list positions file''). Based on anecdotal evidence, the Exchange believes that TPHs are submitting fractions of positions that they would like to compress to the Exchange as compression-list positions because of the format in which the Exchange publishes the compression-list positions file. Specifically, the Exchange believes TPHs are concerned about revealing large position imbalances and thus are hesitant to submit their full eligible compression-list positions to the Exchange. This results in an overall lowering of the compression forum efficiency, fewer SPX positions closed, and less reduced capital that could be used to create and maintain greater liquidity in the SPX options market.

If the Exchange were to only publish the offsetting size of long and short positions in each series, however, these concerns would be alleviated. Accordingly, the Exchange proposes to amend paragraph (a)(2) to provide that it will publish only up to the size of the offsetting compression-list positions in each series for which both long and short positions have been submitted to the Exchange. Specifically, the Exchange proposed to amend paragraph (a)(2) of Rule 6.56 to provide that prior to the open of Regular Trading Hours on the third to last business day of each calendar month, the Exchange will make available to all TPHs a list including each series for which both long and short compression-list positions have been submitted to the Exchange and the size of the offsetting compression-list positions in those series. The difference between the current and proposed compression-list positions file publication methodologies can be demonstrated through the following example, which assumes that prior to the close of trading on the fourth to last business day of a particular calendar month, the Exchange receives the following compression-list positions from TPHs XYZ, ABC, and 123:

Market participant	Symbol	Expiration date	Strike	Call/put	Size
XYZ TRADING	SPXW	6/2/2017	2000	C	−125
XYZ TRADING	SPXW	6/2/2017	2005	P	2500
XYZ TRADING	SPXW	6/2/2017	2110	P	−75
XYZ TRADING	SPXW	6/2/2017	2200	P	−166
XYZ TRADING	SPXW	6/2/2017	2210	C	250
XYZ TRADING	SPXW	6/2/2017	2220	C	2000

[15] *See* Securities Exchange Act Release No. 79745 (January 5, 2017), 82 FR 3379 (January 11, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule) (SR–CBOE–2016–094).

Market participant	Symbol	Expiration date	Strike	Call/put	Size
XYZ TRADING	SPXW	6/2/2017	2300	C	2500
XYZ TRADING	SPXW	6/2/2017	2350	C	−652
XYZ TRADING	SPXW	6/2/2017	2360	C	−1425

Market participant	Symbol	Expiration date	Strike	Call/put	Size
ABC TRADING	SPXW	6/2/2017	2000	C	−76
ABC TRADING	SPXW	6/2/2017	2005	P	−105
ABC TRADING	SPXW	6/2/2017	2050	P	−166
ABC TRADING	SPXW	6/2/2017	2250	C	−4000
ABC TRADING	SPXW	6/2/2017	2360	C	1322
ABC TRADING	SPXW	6/2/2017	2500	P	−50

Market participant	Symbol	Expiration date	Strike	Call/put	Size
123 TRADING	SPXW	6/2/2017	2000	C	50
123 TRADING	SPXW	6/2/2017	2110	P	−105
123 TRADING	SPXW	6/2/2017	2220	C	−200
123 TRADING	SPXW	6/2/2017	2250	P	−400
123 TRADING	SPXW	6/2/2017	2250	C	107
123 TRADING	SPXW	6/2/2017	2300	C	−200
123 TRADING	SPXW	6/2/2017	2350	P	−62
123 TRADING	SPXW	6/2/2017	2360	C	−5000
123 TRADING	SPXW	6/2/2017	2500	P	−300

Assuming that each of the positions listed above qualify as compression-list positions under Rule 6.56(a)(1), under the current rule, the Exchange would compile the compression-list positions file by aggregating the long and short positions in each series for which both long and short positions had been submitted to the Exchange as follows:

Symbol	Expiration date	Strike	Call/put	Long size	Short size
SPXW	6/2/2017	2000	C	50	−201
SPXW	6/2/2017	2005	P	2500	−105
SPXW	6/2/2017	2220	C	2000	−200
SPXW	6/2/2017	2250	C	107	−4000
SPXW	6/2/2017	2300	C	2500	−200
SPXW	6/2/2017	2360	C	1322	−6425

Under the Exchanges' proposal to show only up to the offsetting size in each series for which both long and short positions have been submitted to the Exchange, assuming the same compression-list positions above were submitted to the Exchange, the Exchange would publish the following compression-list positions filing:

Symbol	Expiration date	Strike	Call/put	Size
SPXW	6/2/2017	2000	C	50
SPXW	6/2/2017	2005	P	105
SPXW	6/2/2017	2200 [sic]	C	200
SPXW	6/2/2017	2250	C	107
SPXW	6/2/2017	2300	C	200
SPXW	6/2/2017	2360	C	1322

As demonstrated in the examples above, using the current method for compiling the compression-list positions file, several large position imbalances would be shown to market participants, whereas under the proposed method for compiling the compression-list positions file, only the net size would be shown.

The Exchange also proposes to amend Rule 6.56(c) to provide that TPHs may solicit a TPH or a non-TPH customer or broker-dealer to transact through a compression forum in accordance with the provisions of this Rule and the solicited transaction requirements contained in Rule 6.9 and that trades executed through a compression forum pursuant to Rule 6.56 and otherwise in compliance with the Rules, including, but not limited to Rule 6.9 will not be deemed prearranged trades. Currently, Rule 6.56(c) provides that TPHs may communicate with other TPHs to determine: (1) A TPH's open single-legged or multi-legged SPX position, including side and size, and/or (2) whether a TPH anticipates participating in a compression forum at a particular date and time, but that during these communications, TPHs may not discuss the price of a potential transaction involving these positions during a compression forum. This restriction is stricter than the Exchange's normal trading rules, which, under Rule 6.9 (Solicited Transactions), permit price discovery. The Exchange believes permitting solicited transactions that include discussion of price in accordance with Rule 6.9 may enhance the compression forum process. The

proposed rule change also harmonizes the compression forum rules with requirements for solicited transactions under Rule 6.9 and the provision of Rule 6.56(b), which provides that trades executed through compression forums are subject to normal SPX trading rules, apart from the specifically enumerated exceptions as provided in Rule 6.56(b)(1) and (2). The Exchange believes that this amendment would further align the compression forum trading rules with normal SPX trading rules, which would clarify the Rules and eliminate both potential confusion and regulatory discrepancy.

The Exchange proposes to further amend the text of Rule 6.56(c) to provide that trades executed through a compression forum pursuant to Rule 6.56 and otherwise in compliance with the Rules, including but not limited to Rule 6.9 (including a discussion of price as permitted by that rule), will not be deemed prearranged trades.[16] The Exchange proposes to make corresponding changes to Rule 6.56(b) to make clear that all normal SPX trading rules apply to transactions executed through compression forums, including but not limited to the solicited transaction rules in Rule 6.9.

The Exchange also proposes to make several clarifying changes to the rule text of Rule 6.56. In paragraphs (a)(1), (b), (b)(1), and (c), the Exchange proposes to change the word ''during'' to ''through'' to make clear that the rules apply to transactions executed through the compression forum process, rather than transactions in series of SPX options that may be executed during the hours in which a compression forum is taking place, but outside of the compression forum process.

The Exchange proposes to amend Rule 6.56(a)(4) to delete the word ''conduct'' and replace it with the words ''make available.'' Currently, Rule 6.56(a)(4) provides that the Exchange will conduct an open outcry ''compression forum'' in which all TPHs may participate on each of the last three business days of every calendar month at a location on the trading floor determined by the Exchange. The Exchange, however, does not conduct or participate in the compression forum process. Rather, the Exchange provides a locale for the compression forums or ''makes available'' compression forums to TPHs. Accordingly, the Exchange proposes changes to Rule 6.56(a)(4) to make this point clear.

Finally, the Exchange proposes changes to paragraph (b)(2) of Rule 6.56 to make clear that the minimum increment for bids and offers represented in open outcry in a compression forum is $0.01, both for single series positions and with respect to complex orders

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change is reasonable, equitable, and does not unfairly discriminate against any market participants. The Exchange notes that all TPHs with open SPX positions submit compression-list positions (that would be eligible for a fee rebate) in accordance with the proposed rule change. In fact, the proposed rule change would encourage participation by additional participants as any market participant holding an SPX position could now submit positions eligible compression-list positions (that would therefore qualify for a fee rebate), rather than only those with positions meeting certain limiting criteria. Any market participant with an open SPX positions could participate in a compression forum (including customers through CBOE Floor Brokers), as they would for any other SPX trade. Participation in compression forums, as well as advanced submission of compression-list positions, is optional, and TPHs may also continue to trade open SPX positions during normal trading.

Furthermore, the Exchange believes that its proposal is consistent with the Act in that it seeks to foster liquidity in the SPX options market in light of the bank regulatory capital requirements. As described above, the Exchange believes that the new bank regulatory capital requirements could potentially limit the amount of capital CTPHs can allocate to their clients' transactions, which in turn, may impact liquidity, particularly in the SPX market. Specifically, the rules may cause CTPHs to impose stricter position limits on their clients, including Market-Makers. The Exchange believes that permitting TPHs to reduce open interest in offsetting SPX options positions in the manner set out in Rule 6.56 would likely contribute to the availability of liquidity in the SPX options. The Exchange believes that the proposed rule would serve to protect investors by helping to ensure consistent continued depth of liquidity in the SPX options market.

The Exchange also believes the proposed rule change is consistent with the Act, because the proposed procedure is consistent with its current rules. The proposed rule would direct that all trading through compression forums be conducted in accordance with normal SPX trading rules and thus, in the same manner as transactions during normal SPX trading, except that they must be closing only and may be in penny increments. In particular, the proposed changes to Rule 6.56(b) and (c) would eliminate discrepancies in the

[16] Under the Exchange's policy concerning prearranged trading, TPHs are cautioned that any purchase or sale, transaction or series of transactions, coupled with an agreement, arrangement or understanding, directly or indirectly to reverse such transaction which is not done for a legitimate economic purpose or without subjecting the transactions to market risk, violates Exchange Rules and may be inconsistent with various provisions of the Act and rules thereunder. All transactions must be effected in accordance with applicable trading rules, must be subject to risk of the market, and must be reported for dissemination. In addition, under the Exchange's policy, TPHs are reminded that Section 9(a)(1) of the Act provides in relevant part that it shall be unlawful for any member of a national securities exchange, for the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties. *See* CBOE Regulatory Circular RG16–190 (Prearranged Trades). In this regard, Rule 6.56(c) is not intended as an absolute safe harbor from prearranged trading prohibitions, but is instead intended to provide that, the act of soliciting another party to transact through a compression forum will not be deemed to be prearranged trading provided that the transaction is otherwise executed in accordance with the Rules, including, but not limited to, the Exchange's solicitation rules and open outcry trading procedures, as modified by Rule 6.56(b).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

trading rules that apply to trading through compression forums and normal SPX trading rules by harmonizing the solicited transactions rules and making trading through compression forums subject to the rules set forth in Rule 6.9. Accordingly, the Exchange believes that the proposed rule changes to Rule 6.56 would eliminate potential confusion caused by regulatory discrepancies in the Rules and provide additional clarity, specifically with respect to the application of the solicited transaction rules. The Exchange believes that the adoption of clear, transparent, and consistent rules is in the best interests of both investors and the general public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act because it applies to all market participants with positions that meet the eligible criteria in the same manner. The proposed change would encourage the closing of positions, which, once closed, may serve to alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain SPX positions. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to the trading of SPX options, which are exclusively-listed on CBOE. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are eligible to participant through CBOE TPHs. Furthermore, as stated in Item 3(b) above, submission of lists of positions for compression is completely voluntary, open to all TPHs, and non-binding, in that submission of a list does not require a TPH to trade any position or even represent any position through a compression forum. Lists of positions will be made available to all TPHs simply alert TPHs to certain SPX positions that other TPHs are interested in closing at the end of each calendar month.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [20] and Rule 19b–4(f)(6) [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2017–035 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–CBOE–2017–035. 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–CBOE–2017–035, and should be submitted on or before May 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09424 Filed 5–9–17; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Walnut Ridge Regional Airport, Walnut Ridge, Arkansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Walnut Ridge Regional Airport under the provisions of Section 125 of the Wendell H. Ford Aviation

Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before June 9, 2017.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Glenn A. Boles, Manager, Federal Aviation Administration, Southwest Region, Airports Division, AR/OK Airports Development Office, ASW–630, Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Charles Snapp, Mayor of Walnut Ridge at the following address: City of Walnut Ridge, Arkansas, 300 West Main Street, Walnut Ridge, AR 72476.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Burns, Program Manager, Federal Aviation Administration, AR/OK Airports Development Office, ASW–630, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Walnut Ridge Regional Airport under the provisions of the AIR 21.

On May 3, 2017, the FAA determined that the request to release property at Walnut Ridge Regional Airport submitted by the City of Walnut Ridge met the procedural requirements of the Federal aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than June 19, 2017.

The following is a brief overview of the request: The City of Walnut Ridge requests the release of 15.12 acres of airport property valued at $90,000.00. The release of property will allow for the sale of the property to Custom-Pak, Inc. for the expansion of an existing industrial facility adjacent to the airport. The City of Walnut Ridge will use the $90,000.00 resulting from the sale of the 15.12 acres to fund the construction of Jet-A and AvGas fuel farm, the rehabilitation of runways and taxiway, and the rehabilitation of existing hangars and existing buildings on the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walnut Ridge Regional Airport.

Issued in Fort Worth, Texas, on May 3, 2017.

Ignacio Flores,

Director, Airports Division.

[FR Doc. 2017–09460 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0116]

Household Goods (HHG) Consumer Protection Working Group Third Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: Congress mandated the establishment of the HHG Working Group in the Fixing America's Surface Transportation (FAST) Act. The group is charged with providing recommendations on how to better educate and protect HHG moving customers (consumers) during interstate HHG moves.

DATES: The third HHG Working Group meeting will be held on June 27 and 28, 2017, from 9:00 a.m. to 4:30 p.m. and June 29, 2017, from 9:00 a.m. to 12:00 p.m. at the USDOT Headquarters, 1200 New Jersey Avenue SE., Washington, DC, 20590. Members of the public planning to attend should email Kenneth Rodgers at *kenneth.rodgers@dot.gov* by June 13, 2017. Members of the Working Group and the public should arrive at 8:30 a.m. to facilitate clearance through DOT security. Copies of the agenda will be made available at *https://www.fmcsa.dot.gov/fastact/household-goods-consumer-protection-working-group*.

FOR FURTHER INFORMATION CONTACT: Kenneth Rodgers, Chief, Commercial Enforcement and Investigations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC.

Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Monique Riddick at 202–366–8045 or by email at *Monique.Riddick@dot.gov,* by June 13, 2017.

SUPPLEMENTARY INFORMATION:

FAST Act

Section 5503 of the FAST Act (Pub. L. 114–94) (December 4, 2015) requires the HHG Working Group to provide recommendations to the Secretary of Transportation, through the FMCSA Administrator. The Working Group will operate in accordance with the Federal Advisory Committee Act (FACA). 5 U.S.C. App. 2.

As required by Section 5503 of the FAST Act, the Working Group will make recommendations in three areas relating to ''how to best convey to consumers relevant information with respect to the Federal laws concerning the interstate transportation of household goods by motor carrier.'' Those areas are:

1. How to condense the FMCSA ''Ready to Move?'' tips published in April 2006 (FMCSA–ESA–03–005) into a more consumer friendly format;

2. How best to use state-of-the-art education techniques and technologies (including how to optimize use of the Internet as an educational tool); and

3. How to reduce and simplify the paperwork required of motor carriers and shippers in interstate transportation.

Section 5503 mandates that the Secretary of Transportation appoint a Working Group that is comprised of (i) individuals with expertise in consumer affairs; (ii) educators with expertise in how people learn most effectively; and (iii) representatives of the FMCSA regulated interstate HHG moving industry.

On April 20, 2016, FMCSA solicited applications and nominations of interested persons to serve on the HHG Working Group. Applications and nominations were due on or before May 20, 2016 [81 FR 23354]. The HHG Working Group met on January 4–5, 2017, and May 2–4, 2017.

The Working Group will terminate one year after the date its recommendations are submitted to the Secretary of Transportation.

Meeting Information

Meetings will be open to the general public, except as provided under FACA. Notice of each meeting will be published in the **Federal Register** at least 15 calendar days prior to the date of the meeting.

For the June 27–29, 2017, meeting, oral comments from the public will be heard from 10:00 a.m. to 11:00 a.m. on June 29, 2017. Should all public comments be exhausted prior to the end of the specified oral comment period, the comment period will close.

Issued on: May 4, 2017.

William A. Quade,

Associate Administrator for Enforcement.

[FR Doc. 2017–09454 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0084]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ENTROPY; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 9, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0084. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ENTROPY is:

—*Intended Commercial Use of Vessel:* Local charter trips. 2 to 4 people for a short 3 hour trip

—*Geographic Region:* ''California''

The complete application is given in DOT docket MARAD–2017–0084 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121).

By Order of the Executive Director.

Dated: May 4, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–09403 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0082]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BIG GAME; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 9, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0082. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BIG GAME is:

—*Intended Commercial Use of Vessel:* ''Fishing Charter Boat''

—*Geographic Region:* ''Rhode Island''

The complete application is given in DOT docket MARAD–2017–0082 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from

the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: (Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Executive Director.

Dated: May 4, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–09399 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0083]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OVERTIME; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 9, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0083. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OVERTIME is:

—*Intended Commercial Use of Vessel:* carry passengers only sunset cruises, daily getaways, private events.

—*Geographic Region:* ''Rhode Island, Massachusetts, Connecticut, New York, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, Florida, Maryland, New Hampshire''

The complete application is given in DOT docket MARAD–2017–0083 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Executive Director.

Dated: May 4, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–09404 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0085]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BOATEL; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 9, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0085. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590, Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BOATEL is:

—*Intended Commercial Use of Vessel:* ''for passenger charter and sightseeing and dinner excursions on the waterways of the states requested.''

—*Geographic Region:* ''Ohio, West Virginia, Indiana, Kentucky, Illinois, Tennessee, Mississippi, Alabama and Florida''

The complete application is given in DOT docket MARAD–2017–0085 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Executive Director.

Dated: May 4, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–09401 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0080]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BLACK LION; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 9, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0080. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BLACK LION is:

—*Intended Commercial Use of Vessel:* ''The vessel will charter four to six weeks with no more than six passengers between the months of July and September.''

—*Geographic Region:* ''New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine''

The complete application is given in DOT docket MARAD–2017–0080 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Executive Director.

Dated: May 4, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–09400 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0087]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CAROLINE; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is

authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 9, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0087. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CAROLINE is:

—*Intended Commercial Use of Vessel:* ''Charter passenger''

—*Geographic Region:* ''Alaska (excluding waters in Southeastern Alaska and waters north of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound])''

The complete application is given in DOT docket MARAD–2017–0087 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Executive Director.

Dated: May 4, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–09402 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0086]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel APOLLO; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 9, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0086. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel APOLLO is:

—*Intended Commercal Use of Intended Commercial Use of Vessel:* ''Passenger Vessel''

—*Geographic Region:* ''Washington and Oregon''

The complete application is given in DOT docket MARAD–2017–0086 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves,

all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121

By Order of the Executive Director.

Dated: May 4, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–09398 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0081]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel RAIN BIRD; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 9, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0081. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RAIN BIRD is:

—*Intended Commercial Use of Vessel:* ''Sight seeing, dinner cruise''

—*Geographic Region:* ''Washington State''

The complete application is given in DOT docket MARAD–2017–0081 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Executive Director.

Dated: May 4, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–09405 Filed 5–9–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Availability of Report of 2016 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to section 10(d), of the Federal Advisory Committee Act of the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during Fiscal Year 2016 has been prepared. A copy of this report has been filed with the Assistant Secretary for Management of the Department of the Treasury.

DATES: *Effective Date:* This notice is effective May 3, 2017.

ADDRESSES: The report is available for public inspection and requests for copies should be addressed to: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue NW., Washington, DC 20224, Telephone number (202) 622–5164 (not a toll free number). The report is also available at *www.irs.gov.*

FOR FURTHER INFORMATION CONTACT: Maricarmen R. Cuello, AP:SPR:AAS, Internal Revenue Service/Appeals, 51 SW. 1st Avenue, Room 1014, Miami, FL 33130, Telephone number (305) 982–5364 (not a toll free number).

SUPPLEMENTARY INFORMATION: It has been determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is, therefore, not required. Additionally, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Donna Hansberry,

Chief, Appeals.

[FR Doc. 2017–09468 Filed 5–9–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of

the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2017. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABA	PHILIPPE	CHRISTIAN
ABE	HIROMI.	
ABOITIZ	EDUARDO	ALFRED
ABOITIZ	JUAN	IGNACIO
ABRAHAM	MICHAEL.	
ABRAHAM	ROBERT	HARRY
ABRAM	BRETT	THOMAS
ACCONCIA	OLEG	NICOLA
ACHARYA	BALCHANDRA.	
ADCOCK	CHERYL	ANN
ADELSKI	ROBERT	BORIS
AGARWAL	MADHURIE	SURENDRA
AGGARWAL	VINOD.	
AHARONOFF	EYAL	AVISHAI
AHLBERG	FREDRIK	STEN KONRAD
AHRWEILER	JUDY	MARIE
AIZEN	EDWARD.	
AIZEN	RACHEL	LENA
AL MOUSA	EBTISAM	ADNAN
AL WAZZAN	LUJAIN	SALAH
ALANSARI	BADER	EISSA
AL-ANZI	ABDULAZIZ	AL-AHMAD
ALBURY	JAMES	CHRISTOPHER
ALHADEFF	ROBERT	JACOB MACKLEY
ALHADEFF	SOLANGE	YONA
ALLET	NATACHA.	
ALLIE	AMIR.	
ALMANSOORI	AHMED	ALI
AL-MAZEEDI	MUHAMMAD	K.
ALMOALLIM	ANAN	MAZIN
ALONTO	ADNAN	VILLALUNA
ALPERT	ELIZABETH	DAWN
ALPERT	FRANK	HOWARD
ALQASIM	SARA	MOHAMMED
AL-QASIMI	NORA	MOHAMMED
ALQASSIMI	OMAR	HANIF
ALSABAH	MANSOUR	AHMAD
AL-ZANKI	MOHAMMAD	NAJEEB
AMADOR	RAUL	FRANCISCO
AMBLE	MATTHIAS	PETER PLATOU
AMIJO	CARRIEANNA	KRISTINA
AMSTADT	ALBERT	JOSEPH
AMUNDRUD	PATRICIA	ANN
AN	JOO	YEON
ANDERSON	ERIK	THOMAS
ANDERSON	MARQUETTE	JOHN
ANDREWS	CHERYL	COLLEEN
ARNAUD	BEATRICE	de THE
ARNETZ	LISA	FAYE JULIA
ARNTZ	DIETRICH	H.
ARORA	SIDDHARTHA.	
ARQUISCH	KARIN	MARAGRET
ARSENAULT	CHRIS	VITAL
ASAKURA	KOO	MAURITIS
ASP	KARL	ANDREW
ATCHESON	WANDA	KAY
ATKIN	MATTHEW	RYAN
AUSTIN	MICHAEL	ARTHUR
AVERSA	FRANK	GENE
AVERY	WILLIAM	BLAKE
BABEL	CINDY	GARIELLE
BACOS	NILS	RICHARD
BAE	ANDREA	JUNG WOO
BAILEY	DEBORAH	LEE
BALESTRI	JOHN	ANTHONY
BALIMANN	RAPHAEL	FREDERIK

Last name	First name	Middle name/initials
BALL	EVELYN	LOUISE
BALLMER	STEVEN.	
BALON	THOMAS	DAVID
BANTIS	APOSTOLOS.	
BARAK	MOSHE	YONATAN
BARAKAT	WALEED	ABDEL
BARBEY	KELLOG	GRIGGS
BARBEY	LUCAS-PIERRE	HENRICHS
BARGOUD	CHARLOTTE	RAOUF
BARKAY	RIVKA.	
BARNETT	DOUGLAS	ELLIOTT
BARRATT-BOYES	JOHN	NORMAN
BARRETT-GUBELMANN	PATRICIA.	
BARRIENTOS	JOSE	MAURICIO LANDAVERDE
BASTIN	NADIANE	THERESE ANNE
BAUMANN	MARC	PATRICK
BAYES	RYAN	MICHAEL
BEALY	JOANNE	MARIE
BEAUCHEMIN	DION	EDWARD HENDRIK
BECHER	WILLIAM	EDWARD
BECK	JAMES	ERIC
BECKER	LUKE	ADRIAN WEBER
BEDDOME	JACQUELINE	LOUISE
BEDOYA	EMILIO.	
BEGOUGNE de JUNIAC	ALEXANDRA	K.A.
BELISLE	MARY	SUZANNE
BENN	SUSAN	ELIZABETH
BERARDI	DONATELLA	MARISA
BERARDI	GIOVANNI	MARINO
BERGENGREN	MARIA	CHRISTINE
BERGER	NADJA.	
BERGH	JOHN	LEWIS
BERGLAR	MARTIN	ANTHONY
BERGLUND	CLARENCE	INGVAR OLOF
BERKLEY	ALEXANDER	WILLIAM CHARLES
BERR	THEODOR	BRIAN
BERRIDGE	JULIA	ANNE FRANCES
BERT	BRUNO	LUCIEN FRANCOIS
BESSON	MICHELE	NADIA
BHAT	SUSHEELA	SHAMA
BHATIA	CHAITNYA	GULABSI
BIALIK	TAMAR	CHAVA
BIBEAU	FRANCIS	ALEXANDRE
BIBEAU	KARINE	EMMANUELLE
BIBEAU	YANNICK	THIERRY
BIELSKI	JERRY.	
BISHOP	TARRINA	JEAN
BITTING	SETH	SIMON
BLACK	MARIAN	ROSE
BLAIR	CYNTHIA	LYN
BLOM	MARGARET	ALICE
BOBERG	EVA	MARIA
BOBOWSKI	MELANIE	REBECCA
BOBYK	ARWEN	GANESSA WIDMER
BOCCHINO	ROBERTO.	
BOEHMER	PATRICIA	GOERKE
BOILLIN	BRUNO	LUC-MICHEL
BOJDUJ	BRETT	NICHOLAS
BOLINDER	ANDERS	GUNNAR
BONI	PATRICK	CHRISTOPHER
BOONBANJERDSRI	KOBI.	
BOOTH	JOANNA	TEN BOS
BORELLA	LORENZO.	
BORNEMANN	REBECCAH	ANNE
BOROVITZ	ZVI.	
BORROWMAN	ROBERT	DOWSON
BORST	JOHANNA	MARIA
BOTHWELL	CHRISTOPHER	MARTIN FLEMING
BOTTOLI	IVAN	LUIGI CLETO
BOURDEAUX	JACQUELINE	JEANNE
BOWEN	ALAN	C.
BOYLE	DIANE	LYNN

Last name	First name	Middle name/initials
BRACKMAN	COLIN	JASON
BRADLEY	LINDA	JANE
BRADY	TARA	MARY ELIZABETH
BRANCHEY	ALAIN	PAUL ROBERT
BRANDINU-NICHOLSON	SHERRY	SUE
BRECHET	MONIQUE	CATHERINE
BREMAUD	REBECCA	HAZEL
BRETSCHER	SIMONE	ANDREA
BRIDEAU	FRANCIS	ALEXANDER HAIG
BROPHY	BRIAN	FRANCIS
BROWN	BRENDA	KAY
BROWN	EUGENE.	
BROWN	JARED	MCDANIEL
BROWN	MATTHEW	DUNCAN
BRUHAM	LIAM	ROBERT
BRUMFIELD	DANIEL	RAYMOND
BRUMWELL	MARY	LYNN
BRUNBERG	FREDRIK	CARL
BRUNO	JULIE	TINA
BUBEL	JENNIFER	ELLEN
BUCKLEY	SUSAN	TAFT
BUECHEL	MICHAEL	MORRIS
BULLER	KIMBERLEY	ANNE
BURCKHARDT WETTSTEIN	CLAUDIA	R.E.
BURGISSER	THOMAS	FRANK
BURKE	MICHAEL	ALLAN
BUTTERWORTH	WILLIAM	NEAL
CAGIATI	ANTHONY	HARE
CANTIENI-BRUNNER	NINA	JOY WHITNEY
CARLEY	CATHLYN	MARY
CARLMAN	NANCY	JANE
CARLSON	MICHAEL	ALAN
CARVALHO	SEBASITIAO	GUIMARAES
CASE	VANESSA	HOPE
CATALDO	SYLVIE	CLAUDE MARIE
CAVIER	MAIKE	CHRISTINE
CHABOT	RICHARD	ROYOLA
CHAI	MIN	JI
CHAM	LIBERTY	JANE TIU
CHAMBERS	CARL-JOHAN	MARTIN NORMAN
CHAMBERS	JULIA	KATARINA ELISABETH
CHAN	ISABELLE	WEY YEN
CHAN	KELVIN	KA KWUN
CHAN	PURDY	YING-TING
CHAN	RITA	YUK YEE LEE
CHANARAT	PAHT.	
CHANG	LIANG	HWA
CHAPLIN	KATHLEEN	ELSIE
CHAPLIN	RONALD	KENNETH
CHAPMAN	SARAH	AMANDA
CHARLES-FREEMAN	PATRECE	PEARNELLA
CHAUMONT	DOMINQUE	CLAIRE
CHEETHAM	LOUISA	FINES
CHEETI	SEETHA.	
CHEN	ANDY.	
CHEN	CAROLINE	LIN
CHEN	YIQIANG.	
CHEN	ZHUMING.	
CHENG	CHRISTINE	LYN
CHENG	HUNG	JU
CHENG	JENCHIA	DAVID
CHERLAND	ESTHER	ELIZABETH
CHEUNG	LEE	NO
CHEUNG	STEFANI	LI LIN
CHEW	ABIGAIL	RONG-AI
CHIEMCHANYA	PAISID.	
CHIEMCHANYA	PORNWADEE.	
CHILUVURI	PRAMILA.	
CHIN	XIXI	TAN
CHIU	JASON	YUTAI
CHOI	REGINA.	
CHOKSI	GAURAV	ABHAY

Last name	First name	Middle name/initials
CHONG	STEPHANIE	MEI-YAN
CHOW	DONNA	MARIE
CHOW	JESSICA	CHUNG WAH
CHOW	KEVIN	CHUNG YUAN
CHRISTEN	THIERRY	JEAN-REMY HARPER
CHU	HOWARD.	
CHU	MICHAEL.	
CHUANG	SHANG-YAN.	
CHURCHHOUSE	VERONICA	JEAN SYMONS
CLANCY	PATRICIA	ANN
CLARK	AIDAN	WILLIAM
CLARK	HANNAH	JEAN
CLOSSEY	LUKE	SEAN
COBITZ	ANTHONY	LOUIS
COHEN-HERRENDORF	KASONDRA.	
COLETTI	VEGLIA	ANGELA OLYMPIA
COLLAND	VIVIAN	THERESE
COLTER	JAYME	ELLEN
CONRADI	PETER	CHRISTIAN
CONSTABLE	MELISSA	AMANDA
CONYERS	HAROLD.	
COOK	BENJAMIN	DOUGLAS
COOK	RANDALL	WILLIAM
COOKE	CATHERINE	ALISON
COOLEY	BRYAN	ELLIOT
COOMBS	AUGUST	TRAHMS
COOMER	ERIN	ELIZABETH
COOPER	SUSANA	CHEUNG
CORNELSEN	DALE	KELLY
COSTA	THEODORE.	
COSTELLO	ANDREA	TEANINI RUSTAD
COSTELLO	ANTHONY	RAY KAIAMA
COSTELLO	EMILY	MOANA THERESA
COVINGTON	COLINE	ELIZABETH
COWLEY	JENNIFER	SUE
CRAFT	DANA	ELIZABETH
CRANDALL	GREGORY	LYNN
CROSETTI	CHRISTINE	SYLVIA
CROSS	TIMOTHY	ANDREW
CROSSEN	LUKE	SCOTT JAMES
CULLEY	CATHERINE	ELIZABETH
CUTLER	LAURA	ELISABETH BUTTERFIELD
DAGMAR-HENRIOD	MICHELE.	
DAHER	AUMERIC	WILLIAM
DALLHOFF	SUSAN	MARION
DANIELS	EDWARD	PAUL
DANIELSSON	EVA	MARIA
DANTHINE	ERIC	ALEXANDRE
D'ANTONIO	ANTONIO.	
DARAKANANDA	CHUTINDHON.	
DARGAY	JOYCE	MARY
DAVENPORT	CAITLIN	RUTH
DAVERIO	JULIE	JOAN
DAVIS	ELLEN	BARBARA
DAVIS	GAVIN	STEWART
DAVIS	MARCIA	JEAN
DAY	SUSAN	MARIE
DE ARRIZABALAGA	LEONARDO.	
DE BRUYN	LUCIA	JOAN
DE COMASEMA	SANTIAGO	EDUARDO GIBERT PALOU
DE KEYSER	ELINE	GHISLAINE FREDERIQUE
DE LA BARRE DE NANTEUIL	FLORIAN.	
de LA GUARDIA	JORGE	EDUARDO
DE LEEUW	JULIA	FREDERIQUE
DE LEEUW, JR	JAN	HENDRIK
DE LEVAL	FABIENNE	JENNIFER
DE LISLE II	WILLIAM	FREDERICK
DE MAREDSOUS	ALBAN	M.B.G. DESCLEE
DE PIANTE	VINCENT	JOSEPH
DE RIBES	EDOUARD	JEAN MARIE
DE SARRIERA	ALEJANDRO.	
de TOMBE-GROOTENHUIS	MARJORIE.	

Last name	First name	Middle name/initials
DEL PUERTO	SANTIAGO	OSCAR
DELGADO	SEBASTIAN	R.
DELL'OCA	MELANIE	JOYCE
DEMEULLENAERE	CHRISTOPHE	MAURICE
DEMUTH	EVELYN	KAREN
DENGIN	GEORGE	BORIS
DENISON	KATIE	MARIE
DENYER	WILLIAM	EARL
deREGT	NICOLAS	JOHN JOHN
DeSILVIA	CECILIA.	
DESROCHES	JANET.	
DESTERKE	MARTHA	MARIE
DESTREBECQ	OLIVIER.	
DETOMA	EDOARDO.	
DEVAUD	DENIS	ALBERT
DEVINS nee: COPLAND	KATHERINE	COPLAND
DEVLIN	RACHAEL	DOROTHY
DEVOOGHT	PHILIPPE.	
DI CARLO TURCHI	INES.	
DINGER	TILO	LOUIS
DISCO	CORNELIS.	
DIVORNE	MICHEL	ANDRE
DIXON	ROBERT	EUGEN
DOBBY	CHRISTINE	GAIL
DODDS	THOMAS	HAROLD HILTON
DOE	EDWARD	ROSS
DOESSANT	CELINE	MARIE BRUCKER
DOHERTY	JEROME	ROBERT
DONATH	MICHAEL.	
DOUGLAS	BONNIE	ELIZABETH
DOYLE	VICTORIA	EARLGRACE
DRAHEIM	CURTIS	STEVEN
DRAPS	WILLEM	LOUIS
DROUX	EMILIENNE.	
DUCCINI	KATHLEEN	ANN
DUCHESNE	GUILLAUME	GEORGES AUGUSTES
DUENAS	SYLVIA	MARIA
DUFF	BRUCE	G.
DUGGAN	DANIEL	EDMUND
DUNCAN	JESSICA	LORRIANE
DUNCAN	LAUREN	ARDEN
DUTERRIER	DARLENE	HARRIET
DUTTON	DIANE	JACQUELINE
DZIALLAS	ULRIKE.	
EBELING	TIMOTHY	ROGER
EDWARDS	ANNEMARIE	ALICE
EICHER	MATTHEW	EVAN
EICHER	TINA	BARBARA
EIRIKSON	MICHAEL	PAUL
EISENMAN	ADAM.	
EKMAN	ELON	VIKTOR
ELIASSON	GRETA	LINNEA
ELNAGGER	AHMED.	
ELTERMAN	GAVIN	SELWYN
ELTERMAN	SANDRA	LEIGH
ENGELBRECHT	LINDA	MARIA
ENGESTROM	ULF.	
ENGLANDER	MICHAEL	CHARLES
ENGLISH	TERESA	MARY
ENNIS	SEAN	FORREST
ERGIN	JOLANTA	WIESLAWA
ERICSON	JONAS	BENGT JOEL
ERICSSON	ANDREA	LINNEA
ERICSSON	GAIL	FELTON
ESMIEU	QUENTIN-JEREMIE	EMMANUEL
ESSAR	CRESSIDA	TAMSIN
EVIATAR	JUDY.	
EYLES	CHRISTOPHER	DAVID
FABER-CASTELL	SARAH	ANNE VON
FAEN	BETSY	ELLEN
FANG	KEVIN	MU WEN
FARDA	ROBERT	SEBASTIAN

Last name	First name	Middle name/initials
FARSHAD TABRIZI	MAZDA.	
FEIFEL	MARCO	FRANK ROLAND
FELD	KNUD.	
FELTON	GAIL	JO-ANNE
FENYO	JEFFREY	RANDOLPH
FERGUSON	PETER	MAURER
FERLAND	DANIELLE	ANNETTE
FERNE	DOROTHY	ANNE
FERRY-FRAU	ELLEN.	
FINKELSTEIN	GIDEON	R.
FINKLESTEIN	LAURA	GLADYS
FINLAY	DANA	ELIZABETH
FINLAYSON	IAN	FRAZER
FINLAYSON	MARLENE	JENNIFER
FLETCHER	ROBERT	TARO
FLORE	HANS	LOUIS
FORD	LINDSAY	MARION
FORTUNA	RONALD	DAVID
FORWARD	JAYNE	ELIZABETH
FOSTER	NANCY	PATRICIA
FOYLE	COLIN	STEPHEN
FOYLE	JULIA	CLARE
FRAUTSCHY	DAVID	JUAN
FREER	ALETA	MARGARET
FRICK	PATRICIA	JILL
FRIED	PAMELA	JOY
FRIEDMAN	KENNETH	SCOTT
FRIEND	ANTHONY	R.
FROMBERG-VAN STOLK	CAROLYN.	
FROSSARD	JADE	SEVERINE
FUAD	TURONNY.	
FUJIMORI	SETSUKO.	
FUJIMORI	SHINICHIRO.	
FUJIWARA	YASUHITO.	
FUKUSHIGE	KAZUKI.	
FULLONE-MARIANCHUK	KYTEN	DOUGLAS
FUMAGALLI	ALICE	MARIE ISABELLE
FUNG	JASON	S.
GADELIUS	DANIEL	KNUT
GADMAN	LESLIE	JOHN
GALARRAGA	CARLOS.	
GALLAGHER	REBECCA	MARGARET
GALUZZI	ESTEBAN	LUIS
GAMBLE nee MINSHALL	ELIZABETH	ANN
GAN	JASMINE	TAN
GAN	RAMAT.	
GANDINO	GILBERTO	REMO
GANEK	DAVID.	
GARCIA	JOSE.	
GARCIA	MICHAEL	STEPHEN
GARCIA-BACHMANN	KATIA.	
GARLOW II	JOHN	RICHARD
GASSER	CHRISTOPHE	MARK
GAUDINO	ARIEL	JOANNE ALDRICH
GEBHARDT	ELIZABETH	LOUISE
GEHRIG	SANDRA	ELISABETH
GEIGER	CHRISTIAN	COOPER
GEIJER	CHRISTOPHER	OLIVER BYE
GEIJER	SOPHIE	CATHRINE BYE
GEOGHEGAN nee: GREENTREE	CHERYL	LYNN
GERMANN	KIRDTIN.	
GESSMANN	RODNEY	KALANI
GEUSS	RAYMOND	FRANCIS
GHEKIERE	LOUIS-PHILIPPE	JOZEF
GIAMMARINO	MARIE	ROSE
GIBB	PATRICIA	ANNE
GIESBERT	SABINE-LAURE.	
GILDENHUYS	FAITH	AVERY
GILLEN	FELICIA	VIKTORIA
GILLEN	REBECCA	ELIZABETH
GILLEY	ANTHONY	EDWARD
GILMARTIN	PATRICK	CHARLES

Last name	First name	Middle name/initials
GJERTSEN	JESSICA	MARIE
GLICK	JULIEN	HAROLD
GODFREY	GEOFFREY	ARTHUR
GODFREY	JUDITH	LOUISE
GODFREY	THOMAS	DEAN
GOGGIN	PAUL	TIMOTHY
GOLDSMITH	MARK	THOMAS
GOODMAN	CORINNA	COOPER
GORDON	MASAKO	OTSUKA
GORDON	PETER	N.
GOSSARD	ELIZABETH	MAXINE
GOTO	MUNETOSHI.	
GOULDING	OWEN	WILLIAM
GOURI	HERMAN.	
GRAHAM	DOUGLAS	STANLEY
GRAND CHAMPS	CORALIE	MARIE DE VILLERS
GREENMAN	ARIEL.	
GRUNINGER	MARC	EUGEN
GUERTLER JOSSI	BETTINA	MARIA
GUIDI	DOMINICA	BORGESE
GUO	TIFFANIE	HENG LING
GUO	YUQIANG.	
GUPTA	PRAMOD	KUMAR
GUTKIN	ILAN	CHAI
HAAS	ERIC.	
HACKETT	NANCY	KARIN
HAGUE	OLIVIA	CATHERINE
HALAHAN	SHONA.	
HALL	DARRELL	ARTHUR
HALL	MICHAEL	NIP
HALLER	FREDERIC	ZACHARY
HALSBERGHE	SOPHIE	MARY DIDIER CARINE
HAMILTON	ROBIN	DALE
HAN	DANIEL	KI YOUNG
HAN	DONG.	
HANRATH	MICHELE.	
HANRATTY	BELA	FRANCIS KOEHNE
HARDIANTO	TYAS.	
HARLOW	GEORGINA	CLAIRE
HARP	THOMAS	JACKIE
HARRINGTON	LISA	ANN
HARTONO	STANLEY.	
HAUF	BERND	RUEDIGER
HAY WEBSTER	SHARON	MERLE
HAYES	PLINY	HAROLD
HEAL	DAMIAN	JOHN
HEARD JR	CHARLES	LANGFORD
HEGBE	FREDERIC	EDEM
HEGDE	ARTI.	
HEIM	SUSAN	GAY LINGARD
HELDON	STUART	RYAN
HENDERSON	JULIA	CHRISTINA PATRICIU
HENEBACK	ANNA	GILLIAN COLES
HENGESBAUGH	GUY	DEAN
HEPKEMA	MAARTEN	GETTIT
HERCHENHAN	KARSTEN	DANIEL
HERMANS	BARBARA	U.
HERMANS	DIETER.	
HERMIDA	ERIK	PENSEEL
HERNETH	MATTHIAS	ALEXANDER
HERZOG	PATRICIA	ANNETTE
HETHERINGTON	ROBERT	WARWICK
HICKEY	BRIAN	FRANCIS
HIDEYOS	SURECH	TRICIA BELLS
HILL	SEAN	CHRISTOPHER
HILLESUM	ERNST	ROGER
HILLS	WALTER.	
HINGSON	SUSAN	ELIZABETH
HINRICHS	MAREN	EMILY
HIRAYAMA	ICHIRO.	
HITT	MARY	MARGARET
HO	CLINTON	TUNG

Last name	First name	Middle name/initials
HO	HENRY	CHIEH-TENG
HO	WAI	NGOR CHAN
HOCH	LANCE	JEFFREY
HODGSON	PATRICK	CLIFFORD
HOFFMAN	JEANETTA	LUCILLE
HOFFMANN	HELGA.	
HOGAN	BARBARA	MARIE
HOLLIS	PATRICIA	AMY
HOLTERMANN	ANDREW	STUART
HOLZAPFEL	NEIL	WALTER
HONG	NATHAN	SHIAU-FUN
HOROWITZ	HOWELL	BRUCE
HOUGHTON	JENNIFER	ANNA
HOWE	RICHARD	JAMES
HOYOS	VIRGINIA	MAE BOYD
HRECHDAKIAN	PETER.	
HSIAO	MANSZE.	
HUANG	JIASHENG.	
HUANG	JIAXIAO	R.
HUANG	VICTOR.	
HUANG	VIVIAN.	
HUDON	LANA	M.
HUI	MAXIMILIAN.	
HUIJBOOM	JORAM	DANTE SEBASTIAAN
HULLIGER-DEUBELBEISS	KATHARINA	FRANZISKA
HUNG	EDWARD.	
HUPPI	VERNON	DAMIAN JAY
HURNAUS	DOMINIQUE.	
HUSAIN	FARAH	JAMIL
HUTCHISON	KATRIONA	LOUISE
HYDE	MARIAN	MARGARET
ILES	SYNITHIA	LYNN
INOUE	NOBUO.	
INTHURN	HEINZ	OSCAR
IP	LAURA	REN HUEY
IRWIN	IVAN	DUANE
IRWIN	KATHRYN	CRESSEY
ISBERG	MARGARET	ELLEN
ISHIKAWA	KIMIHIRO.	
ISHIKAWA	MARIKO.	
ISLER	DOMINIC.	
ISLER	SILVIA	INES
ISSERLES-LEACACOS	JUSTINE	CATHERINE
ISSIDORIDES	DIANE	CATHERINE
IZUTA	SAEKO.	
JACOBS	EITHAN.	
JACOBS	ELIZABETH	ANN
JAIN	VIVIEN	JOANNE
JANG	HAE	YOUNG
JANSSEN-NETO	WALTER.	
JANSSENS	HEIDI	ANN
JANSSENS	JEANPAUL.	
JANSSENS	VICKY	FAYE
JANSSENS	WILLIAM	OLAV MILES
JARVIS	KATHARINE	FRANCES
JASPERS	ALDIS	MARGARET
JENSEN	DANA	EVELYN
JESSELSON	NADAV	JOSHUA
JEWELL	RAYMOND	LAWRENCE
JOHANNESEN	MONIKA	ESTELLE
JOHANSSON‘	ANDERS	ROLF EMIL
JONES	ELENA	CATERINA
JONES	IVAN	KENNETH
JONES	JANIS	JUSTIN
JONES	STEPHEN	MICHAEL
JONSSON	ARTHUR	HENRIK
JOOS	ELIZABETH	CHAPPERS
JOOS	MARINA	LUCIA
JORDAN	MARK	TIMOTHY
JOSEPH	CHRISTINE	SUSAN
JULIEN	KATHRYN	JANET
JUNG	ERIC.	

Last name	First name	Middle name/initials
JUON	LAUREN.	
KAAR	NATASHA	ANNE
KADISHAY	RON.	
KADISHAY	YUVAL.	
KAESER	ANDREA	SANDRA
KAGEMAN	THOMAS	JAN
KALLER	KEVIN	PAUL
KAMAL	OMAR	MARWAN
KAMAYANA	JENISA	AMANDA SANDIARINI
KANG	JASON	OSWALD
KANWAR	SUMEET.	
KARGSTEN	HELEN	SABINE SPARTALIS
KARN	KEVIN	LEE
KATTEN	MIRIAM	REGINA
KATZ	STEPHEN	RICHARD
KAYS	ROSALIND	ANN
KEILLER	DOUGLAS	DAVID
KELLER	CATHERINE	MARGARET
KEMPNER	ROBERT	ANDERS
KENDALL	GEOFFREY	PETER
KENNEDY	AIDEN	THOMAS
KEPPER	KARTIKA	ALEXANDRA I.
KERR	RUTH	CORALIE
KETOFF	FABRICE	ALEXIS
KHAN	IRSHADULLAH.	
KHAN	MOHAMMAD	IBRAHIM
KILGORE	MAJA.	
KIM	CRYSTAL.	
KIM	EASUN	DONG
KIM	JUSTIN	JOONG
KIM	MI	JA
KIM	MYUNGRO.	
KIM	PHILIP	HANSOL
KIM	SYLVIA.	
KIM	YEONJU.	
KIMMEL	JOEL	BRYANT
KINDLUND	KARIN	ANNE
KING	ASHLEY	REBECCA
KING	GRETCHEN	CHI FEN
KING	LISA	ANN
KIRSCH	MONIQUE	MARGUERITE
KLAUSNER	DAVID	NEAL
KLEEMAN	DANIEL	CAROL
KLEINBART	AMANDA	FEDERICA
KLEINBART	EMMANUEL	SANTIAGO
KLEINBART	PAUL	MICHAEL
KLEINE	ENRST	GERARD
KNAPPE	CYNTHIA	ANN
KOCK-STRASSER	MONIKA	ADELHEID
KOESTENBERGER	EVA.	
KOK	BIRGITTE	ELISE OLSSON
KOLLER	HENRY	LEE
KOLLER-LEAHY	JUDITH	MARAGRET
KONNO	SUMIKO.	
KOPPEN	ARNE	MARTIN
KORDA	PETER	EDUARD
KOSTRHON	CLAU	PETER
KOTLIK	ADOLF.	
KOTLINSKI	ASTRID	MALGORZATA
KRANZ	ANDREA	MIA
KREIENBUEHL	SALOME	SIMEA
KRIEGER	KARINE.	
KRUSEMAN	PAULINE	WILHELMINE
KU	MICHAEL.	
KUCZYNSKI	PEDRO	PABLO
KUNG	JENNY	CHIN-PIN
KURAPKA	VICTORIA	JOSEFINA
KUTSUKAKE	ICHIZO.	
KWAN	KEVIN.	
KWON	GENE	HYUK
LAATSCH	ARTHUR	KEITH
LAHAM	ELANA.	

Last name	First name	Middle name/initials
LAI	EDUARDO	FERNANDO
LALOE	ANNE	FLORE JEANNE
LANCASHIRE	ANNE	CHARLOTTE
LAO	EDUARDO.	
LAPAN	SYDNEY	GARRET
LARKEN	CAROLINE	LUCIA MARIE
LAURIN	SUSANNE	LAKSOV
LAUWERS	KATHLEEN	FRANCOISE
LAW	JOANNE	CATHERINE
LAWFORD	CYNTHIA	EVE
LAWRENCE	JOHN	PATRICK
LE MARIE	EMILY	JEAN
LE ROUX	KAREN	LORALEE
LEE	ANNY.	
LEE	DER-TSAI.	
LEE	ESTELLA	KIT SUN
LEE	JANE	SANG MI
LEE	JONHA.	
LEE	LEONARD	HOWARD KUOHUI
LEE	MEI	KUEI
LEE	NATHANAEL	GLEN YAO RONG
LEE	WALTER.	
LEFAVE	KRISTIN	ELAN
LEFEBVRE	TANIA	NATHALIE
LEGERER	EVA.	
LEGGETT	DUDLEY	WILFRED
LEGGIO	EMMANUELE	HYUN
LEI	HAN.	
LEIBINGER-KAMMUELLER	NICOLE	CAROLYN
LEIJDER	RAIMOND	ROBERT
LEISS JR	WILLIAM	CARL
LEITCH	EMILY	JANE
LEPP	ERICA.	
LEVIN DUERINGER	ISABEL	SANDRA
LEWIS	MONICA	URSULA
LI	NELLIE.	
LIANG	CHUAN.	
LIGHART	JOYCE GWENDOLYN	GWENDOLYN
LILLJEQVIST	ARVID.	
LIM	ANNETTE	ZHAO YING
LIM	LEONARD	JINWU
LIM	NATASHA	SI MIN
LIN	CHIEN-YU	WILLIAM
LIN	HAI-QING.	
LIN	HANK.	
LIN	HOWARD	CHIA-CHING
LIN	SHAWN	HSIN HAN
LINCOLN	RENE	DENISE
LIND	OLIVIA.	
LINTON	PHOBE	CATHERINE
LISMAY	DIMITRI.	
LITVAK	DAVID	SACHA
LIU	AN	YUAN
LIU	JOSEPH	CHEN CHUNG
LIU	NATALIE	Y.C.
LIU	TOM	J.
LO	LUKE	SIU FAT
LOCKHART	SUSAN	BARRET
LOGGIE	GLORIA	MARIE
LOU	JING.	
LOVELL	CARA	FRANCES
LOW	EIELSON	CHIA WEN
LOWELL	NICOLAS.	
LOWINSKY	DANIEL	JONATHAN
LUEBBE	MARY	ANN
LUEDIN	STEPHANIE	DANA
LUI	QUINN	HOUSTON
LUK	JACQUELINE	OI YEE
LUNDIN	LUKAS	HENRIK
LUNSFORD	GEORGIA	MARGARET
LUPIEN	PASCAL.	
LUPIS	ALEXIS	DAMIEN DOMINIQUE

Last name	First name	Middle name/initials
LUTHER	KAREN	MAIRE
LUTZ	SONJA.	
LYNN	HELENE	MARTIN
M PENOT	EDOUARD	BENJAMIN SEBASTIEN
MA	JOY.	
MACAULAY	SUSAN.	
MacGERAGHTY	ADRIAN	BISHOP
MACKENZIE	RANDALL	DOUGLAD
MacLEAN	SHIRLEY	BERNICE
MADJELISI	MARISSA	BINTE ALI
MAERKI	MICHAEL	ANDREAS
MAGARIAN	JEANETTE.	
MAIER	GARY	EUGENE
MAIER	MARTIN.	
MAK	ALEXANDER.	
MAK	GREGORY.	
MAK	SIMON	YUN-SUM
MALATEST	BRANDON	JOHN
MALKA	YUVAL.	
MANDELKER	BRIAN	MARK
MANGAT	SUSHYANA	KAY
MANN	LAURA	FAYE
MANN	MIKKI.	
MARCH	SOPHIE	ELIZABETH
MARGOT	ELEONORE	JENNIFER
MARKA	DIANA	ANGELIKA
MARKA	SASKIA	LAURA
MARLOW	JULIA	WATSON
MARSHALL	SARAH.	
MARTIN	DEBORAH	MARIE
MARTIN	GEOFFREY	HERSH CHENLI
MASSARO	LORETTA.	
MASSON	ELIZABETH	JANE
MASTERSON	CAROL	ROSANNE
MATSUMOTO	MICHIKO.	
MATTHEWS	JOSEPH	JAMES DONALD
MAXIMCHUK	KAREN	MEGAN
McALLISTER	MEGAN	DALE
MCBRIDE	ETHAN	LEE
MCCALLUM	DIANE	MARIE
MCCAW	PETER	GRAY
McCONNAUGHEY III	JOHN	STEWART
MCCORKLE	LISA	MARIE
MCDONALD	PETER	DOUGLAS
McINNES	LOUETTE.	
McINNIS	KERRY	ANN
MCINTOSH	SIGNE.	
MCKENZIE	ROBERT	GERALD
MCKNIGHT	JOHN	MILLARD
MCLEAN	STEPHANIE	LEE
MCMAHAN	PEGGY	CATHERINE
MEAD	DIANA	COBB
MEHTA	RAJAT.	
MEHTA	YACHANA.	
MEIER	DANIEL	JUERG
MEISTER	KLARA.	
MELA	DAVID	JASON
MELNA	EDWARD	MICHAEL
MENDELSON	DAVID	NATHANIEL
MENDELSON	ERIC	FRANCIS
MENGE	ZOE	CHRISTINE
MENZ	ANDREAS	LEO
MERRITT-GRAY	CORINNE	LOUISE
MEUWISSEN	EDMAR	GERARD JOSEPH
MILLER	ANISTATIA	RENARD
MILLER	ELIZABETH	KOBE
MILLER	JOHN	PEARSE
MILLER-LUEM	SUSAN.	
MILLIGAN	ROSEMARY	CLAIRE ELIZABETH
MILLNERT	EMILY	ALICE
MILNES	ANNE	SIGRID
MINAMI	KAMUI	ALEXANDER

Last name	First name	Middle name/initials
MING	CONCHITA	CONSUELO
MINNES	ALISON	JOY SHUFF
MINOR	LINDA	MARIE
MINZ	HARRISON	SAMUEL
MINZ	IAN	MATTHEW
MINZ	OLIVER	MAXWELL
MIRGONE	EUGENIA	ALESSANDRA
MISHAL	RANY.	
MISKIN	GERSHON	JAY
MITCHELL	KAROL	LEE
MOCHKAROV	SERGEY.	
MOCHKAROVA	LIUDMILA.	
MOLINA	WALTER	G.
MONIZ	ROGER	JOHN
MONTGOMERY	BRUCE	STUART IRLAM
MONZ	ELLIOT	JULIAN
MOOREN	LORI	ELYSE
MOORES	KYLEE	ANN
MORAIS JR.	PHILIP	DANIEL
MORALES	DAVID	EDWARD
MOREL	HANNA	M.
MORELLE	VIOLAINE	CHANTAL
MOREL-PINERA	MAGDALENA.	
MORET	KAREN.	
MORET	SARAH	LAURENCE
MORGENSTERN	ROSALYN.	
MORRIS	BETHIA	REYNOLDS
MORRIS	GAYLE	ROBYN
MORRIS	RONALD	G.
MORRIS	VALERIE.	
MOSER	FERDINAND	CHRISTIAN
MULANI	ASHWIN	JACKY
MULFORD	MICHAEL	TIMOTHY
MYRDAL	KAI	OLE
NADARAJAH	RAVISHANKAR.	
NADOLSKI	TILLMAN.	
NAEGELE	TANJA	JENNIFER
NAKAGIRI	MAKOTO.	
NAKAYAMA	ISSEKI.	
NAMAD	DAVID	ANDREW FREDERIC
NARCISO	LEA	APRIL
NASH	ETHAN	G.
NAULT	DAVID	MICHAEL
NAVID	JACQUELINE	SKOZEK
NEF	TAMARA.	
NELSON	MITCHELL	CAROL
NEUBACHER	MARIA	CHRISTINA
NEWMAN	JOHN	JAMES
NEWTON	ORTRUD.	
NG	CATHERINE	KA-YAN
NG	ERIC	PETER
NG	JONATHAN	SHEN-YOU
NG	KENNETH	KA CHUN
NG	KEVIN	KA-YIN
NG	MAN	KAY ERIC
NG	VINCENT	KA FAI
NGU	JESSICA	SHI-LING
NI	HUAIMING.	
NICOLAS	GREGORY	FRANTZ
NICOLAUS	INGO.	
NICOLET	JOHANNA	DORTHEA
NICOLET	MARC	AURELE
NIEDERSCHWEIBERER	CHRISTINA	ANGELA
NIEM JR	JOHN.	
NIEW	MICHELLE.	
NIGRO	CALOGERO	GUISEPPE FERNANDO
NIHSEN	PETRA.	
NILSSON	MARIE	CHARLOTTE
NOECKER	JON	HUGO
NORDSTROM	LARS	GUNNAR
NORMAN	FRANK	BLADON
NUNNS	JOAN	M.

Last name	First name	Middle name/initials
NUOTTAMO	NIINA	EMILY
OBERMANN	HELEN.	
OEHRI	MICHELLE	EVELYN
OHASHI	TOMOHIKO.	
OHASHI	YUJIN.	
OLANDER	MARC	ALAIN
OLANDER	PAUL	JAMES
OLIVEIRA	JOSE	AUTO LANCASTER
OLIVER	KATHRYN	CECELIA
ONDINE-HOHMANN	OURS.	
O'NEILL-PEARCE	KATHERINE.	
ONG	GAYLA.	
ONG	SEAN	WEIREN
OONG	ELIZABETH.	
ORANGES	RICARDO	ALBERTO BARRAZA
ORANGES	SANTIAGO	ERNESTO BARRAZA
ORIET	LEO	PAUL
ORIET	THERESA	ANN
ORNATI-FERNANDEZ	MICHELA.	
OSTRO	GABRIELLE	FRANKEL
OTT	SHRISTOPH	MATHIAS
OTTERMAN	MICHAEL	JONATHAN
OTTOSSON	EMELIE	ELISABETH
OUTERBRIDGE	AMANDA	NICOLE
OXENHAM	HALEY	LOUISE
PADAR	MONIQUE	CELESTE
PAGE	TEE	MCNEIL
PAHLMAN CARDINI	MARY	ANN
PAINCHAUD	ANDRE	STEPHEN
PAISLEY	DIANE	LYNN
PAPERNICK	IRENE	WENDY
PAREKH	MONA	JAYESH
PARISH	DONALD	ERLE
PARISH	JAMES	ROBERT
PARK	BYUNG	YONG
PARKER	GAIL	EMERY
PARKER	KAREN	YVONNE
PARKER	KARIN.	
PARKER	STEPHEN.	
PARLIER	JENNIFER	ELIZABETH
PATTERSON	CHRISTOPHER	MARCH
PAVIA	NADINE.	
PEARSON	JOHN	HERBERT
PECK	DANIELLE.	
PEENS	HEIDE.	
PELLER	MARY	DIANE
PEREIRA	CINDE	MATHIEU
PEREIRA	MARIANA	RIBEIRO
PEREZ	DAVID.	
PERRIDGE	ROBERT	JOHN
PESACH	MORDECHAI.	
PETERMANN	THOMAS.	
PETERSON	ROBERT	GERARD
PETERSON	STEVEN	LAURIE
PFAENDLER	ROGER	LEE
PFOHE	PHILIP	MICHAEL
PHILLIPS	JO-ANNE	ESTELLE
PICARD JR.	JULIO.	
PIERS	CAROL	ANN
PILATE	PHILIPPE	POL
PIMENTEL	FREDERICK	STEELE
PINCKARD	MATTHEW	JOHN GARETH
PINDEL	EVGENIA	V.
PITT	JOHN	WILLIAM
PLAICE	CAROLINA	LUCIANA
PLUCZENIK	JEANNETTE.	
POLENSKY	WILLIAM	ANDREW
PONDER	JOHNETTE	LANE
PORTER	JOHN.	
PORTER	KATHRYN	JANE
PORTER	LINDA	MARGARET
POULTER	MARY	ELIZABETH EGELBERG

Last name	First name	Middle name/initials
PRAHACS	GEORGIA	MARGUERITE
PRIVE	MYRIAM.	
PRUBANT	MARY	KARLA
PSYCHOYOS	CHRISTINA	MARIE
PYPER	GRAHAM	THOMPSON
QASEM	MOSTAFA	FUAD
QUAH	BRYAN	SU-YANG
QUINN	MICHAEL.	
QUISTGAARD	JENS.	
RAIKEN	DAVID	ALEXANDER
RAJASEKARAN	BASKARAN.	
RAMEL	STIG	OVE GUSTAF
RAMMUNNO	ELSA	RITA
RANDALL	ROBERT	ALAN
RATHIER	CARINE	TATIANA
RAUH	PHILIP.	
RAYNER	LAUREN	JESSICA HASKELL
REDFERN	NORMAN	FRANCIS
REED JR	GARY	THOMAS
REGAZZONI	CORNELIA	RAMONA
REMICK	JUDITH	PAULA
RHO	MINA.	
RHONE	STEPHANIE	AUSTIN
RIBBECK	BERTRAM	TOSHIO
RIBERO	MARY	RITA
RICHARDS	DEBORAH	ANN
RICHARDS	JOANNIE	MICHELLE
RICHARDSON-BATSCHELET	SARAH.	
RILEY	GREGORY	K.
RINALDI	KAREN	ANNE
RINDISBACHER	SARAH.	
RITTER	CHRISTOPHER	HANS PAUL
RITTER	MARCELLA	ROSE
RITZ	ARIANE	ISABEL
ROBBA	MARK	CHRISTOPHER
ROBBINS	WILLIAM	ALDEN
ROBERTS	JUDY	LYNN
ROBERTS	REGINA	KAY
ROBERTSON	BENJAMIN	FORBES
ROBINSON	LOUISE	JULIA
ROBINSON	PENELOPE	MARY
ROBISON	GERALD	WINFORD
ROCHE	MANFRED	ERWIN
RODGERS	SANDRA	ELLEN
ROGERS	TINA	LYNN
ROKER	KAROL.	
ROMANN	CLAUDINE	YVONNE
RONEN	TAMAR.	
ROSE	KAREN	LOUISE
ROSENBAUM	ANNA	MARGARETA
ROSS	JOHN	ROBERT
ROSS	MURAD.	
ROSSITER	AMY	BURDICK
ROSTAD	FRANK.	
ROTHUIZEN	ROXANNE	YVONNE
ROTKOWITZ-SIEGAL	SHARON.	
ROULET	CEDRIC	XAVIER
ROURKE	LESLIE	LEE
ROVELLI	CARLO.	
ROZIN	MONA.	
RUBIN	ANNE.	
RUCKSTUHL	NICOLE	MARGARITE ALBRECHT
RUCKSTUHL	SINAH	TRISHA
RUEGG	NINA	LEE
RUIZ-TAGLE	BENJAMIN.	
RUIZ-TAGLE	MAXIMILIANO.	
RUTTY	GARY	BURNS
RUTZ-ROTHACHER	SUSANNE	BARBARA
SABIONCELLO	ANTONIA	MARIA
SAEED	HASHIM	ABDUL
SAHLY	YOUSIF.	
SALMON	PETER	GORDON

Last name	First name	Middle name/initials
SALMONA	LOGAN	HENRI
SALTER	JOSEPH	DOUGLAS
SALTMARSH	CHRISTOPHER	SIMON
SAMPSON	DIANE	LORRAINE
SANDO-HEALEY	JANET.	
SANTOSO	ADI.	
SATHIRATHAI	SANTITARN.	
SATIADI	LEO	YASMIN
SATO	CANDACE	KAY
SATO	MIKI	HELENA
SAUDAN	JEREMY	TRISTIAN
SAW	MI-UN.	
SCHAERER	DAMIAN	THOMAS
SCHAUBLIN	DAVID	ROBERT
SCHEIDEGGER	PASCAL	STEVEN
SCHEIN	ZVI.	
SCHEMMINGER	KLAUS.	
SCHENNET	RENATE.	
SCHEU	NINA	TAMARA
SCHLATTER	MIN	JA
SCHNEIDER	AMY	JULIA
SCHNEIDER	PAUL	PHILIP
SCHOENENBERGER	FLORAIN	EMIL
SCHOEPF	THOMAS.	
SCHOEPPNER	PETER	MICHAEL
SCHONENBERG	CECILIA	ELEONORA
SCHORNO	JORDAN	ALEXANDER
SCHROCK, JR	ARTHUR	CALVIN
SCHURMANN	ROMAN	DAVID
SCHWEGLER	THOMAS	CHARLES
SCHWEIGHOFFER	DORA.	
SCHWEITZER	JENNIFER	RUTH
SCHWEIZER	THOMAS	SAMUEL
SCHWOB	PHILIP	ROBERT
SCOLLAR	CLAIRE	WIGHTMAN
SCOTT	CONSTANTIN	ELLIOT
SCOTT	ELENA	HANNAH
SEAMAN	ARAN	LEWIS
SEAMON	KENNETH	DOUGLAS
SEE	LANCE.	
SEHGAL	SEEMA	KAY
SEIDL	ANDREW	ERIC
SEILER	MICHAEL.	
SEKULIN	ANDREW	JOHN
SEOK	MYUNG	EUN
SERRALLES-ROSSEN	MARIA	MERCEDES
SETLIFF-COHEN	LISA	KATHRYN
SHAH	SHEELA	M.
SHANAA	BIANCA	CLAIRE
SHAW	PATRICK	PHILLIP
SHAY	CAROL	ANNE
SHERWOOD	MEGAN	ELIZABETH
SHIM	TORRANCE	EUGENE
SHIN	MARY.	
SHIN	SIMON	HYUNSIK
SHIVAS	MARY	ELIZABETH REA
SHRECK	PETER	KURT
SHROUT	STEVEN	EUGENE
SHULMAN	RUTH.	
SIDDLE	CAROL.	
SIEBELS	JANE	MARIE
SIEGAL	RONY.	
SIEGEL	SOPHIE	LARISA
SIGAFOOS	JEFFREY	SCOTT
SILVERMAN	STEPHANIE	JESSICA
SILVERSTEIN	SARAH	ELAINE
SIMMONS-LITTLE	MARGARET	ROSE
SINGAPUR	SURYAPRAKASH.	
SINGH	ANURADHA	ABHAY
SKANDERA	PETER	RICHARD
SKELTON	PAMELA	JEANNE
SKEMER	TERRENCE	MARK

Last name	First name	Middle name/initials
SKIERKA	RYAN	MADISON
SMALLEY	REMY	MICHAEL
SMITH	ADRIENNE	ERICSON
SMITH	AMAHL.	
SMITH	BARBARA	ARLETTE
SMITH	CHRISTOPHER	FOLLANSBEE
SMITH	DIONE	FRANCES
SMITH-MEIER	EVELYN	ISABEL
SMITH-TAPPE	GLORIA	JEAN
SNYDER	GEORGE	KELLEY
SOEMARNO	RINI	MARIANI
SOGNESAND	SIGMUND	ANDERS
SONDEREGGER	STEFAN	JOSEF
SONG	DONG	H.
SOOKNANAN	ASHA.	
SOOKNANAN	CINTRA.	
SOUZA	KATARZYNA.	
SPARKS	RUSSELL	SYDNEY
SPENCER	ELIZABETH	CRAWFORD
SPENCER	JASON.	
SPIER	DENNIS	JOHN
SPIRO	JAY	NILES
SPRINGER-VARGAS-ROCHA	BETTINA	CATHERINE
SPURLING	JANE	YOUNGBLOOD
ST. CYR	DORIS	AFUA OFOSUA
STABELL	BREDO	PETER
STAMATOVA	TZVETA	NIKOLAEVA
STARK	WALTER	PATTERSON
STEEDS	SANDRA	ANN
STEINER	MONIQUE	M.T.
STEINKE	ADEN	JOHN
STEINKE	EVE.	
STENBECK	CRISTINA	MAYVILLE
STERN	KIM	SUE
STERN-STRAETER	JENS.	
STERRETT	RUSSELL	WILLIAM
STEVENS	EILEEN	JOY
STEWART-SHORT	LUKE	DAVANT
STOATE	EDWINA	LOUISE SPENCER
STONE-GIRARD	CAROL	ANN
STOREY	ROBERT.	
STORRER ZINNER	MARKUS	ANDREAS
STORTON	SHARON	MARY
STRONG	HELEN	PATRICIA
STRUCK	BRETT	EUGENE
STRUTT	DANIEL	JOSEPH
STUCKY	BRENT	MICHAEL
STUYT	NYNKE	CHRISTINE MARIE
SUH	MINCHUNG.	
SURENDRA	SYNTHIA	DIETZ
SUSILO	VINNY	VANIA
SUZUKI	MASANOBU.	
SWAIN	HANNAH	REBECCA
SWATERS	CLIFFORD.	
SWATS	ERIC	NICHOLAS
SWIFT-FLATZ	JENNIFER.	
SZEPIENIEC	JESSE	MARTIN
TA'EED	CYAN	CLAIRE
TAHAR	ARCANDRA.	
TAKACS	SHARON	LEE
TAKAHASHI	KYOKO.	
TAMME	LINDA	JAY
TAN	BRYAN.	
TAN	FLORA	CHUNXIU
TAN	JOSHUA.	
TANG	GRACE	KUEI-CHUN
TANG	HO	YEN
TANG	TONY	CHIH TSUNG
TANNER	CORINNE	DANIA
TAUCHER	ALICE	MAE
TAY	SULIAN	M.
TAYLOR	BEN	LEWIS

Last name	First name	Middle name/initials
TAYLOR	CAROL	ANN
TAYLOR	GEORGIA	ANN
TAYLOR	JUDITH	ALICE
TAYLOR	MICHAEL	JAMES FARDON
TAYLOR	SUZANNE.	
TEGNER	RICHARD	YNGVE ESAIAS
TEO	KAI	EN
TEO	SOO	KIAT
THEIS	CONTESSINA	MARIA
THEUX	CAROLINE	AIMEE LOWEN
THISTLETHWAITE	RICHARD	NICHOLAS
THOMAS	EVAN	HENRY
THOMPSON	OLIVIA	PAIGE
THORGERD-HENSEL	DOMINIQUE	THOMAS
THULIN	HANS	ERIK MARCUS WILLIAM
TIELMANN	BETTINA	ARIANE
TILLEY	KAREN	LOUISE
TIMMERMANS	LAURA	TARIKA
TING	GREGORY	KIN WING
TINKOV	OLEG.	
TOMASSI	KRISTEN	KYLE
TONG	CATHERINE	KER CHIEN
TONG	KAM	SHEK PETER
TONG WONG	SABRINA	Y.M.
TOPPLE	SHANNON	DAYLE
TORO	ELIZABETH	TARYN
TOUTAIN	ALEXANDRA	SYLVIE KATHRYN
TOUZET	CAROLE	CLAUDE
TOWART	LACHLAN.	
TOYNE	BENJAMIN	JOHN
TRAN	RANDY	EDDIE
TREMBLAY	PIERRE	PHILIPPE
TSAI	FENDI	JAH-LIN
TSCHARLAND	JULIE	ANNE
TSU	BETTY.	
TSUKAHARA	AMY.	
TUNGAA	TUMENDEMBEREL.	
TWITCHELL	GUY	HOWARD
TYLER	SUSAN	ANNE
ULLRICH	RAYMOND	ANDRE
ULSAKER	TATE	GRAN
UNG	PECK	HOUY
UPSHALL	KATHRYN.	
VACHON	JAMIE	MICHAEL
VALENTINE	ERIC	SCOTT
VALENZUELA	MANUEL	O.
VAN DAM	CHRISTIAN	FRANCIS ANTOINE
VAN DE WEGHE	CHRISTA	MARIA
VAN DER LEE	DOROTHY	ELAINE
VAN DER VEEN	PETER	ALBERT
VAN DER WAAL	HAROLD	CORNELIS
VAN HASSELT	JANET	MIYON
van OVERBEEK	PETER.	
VARAN	BRICE	KENNDEY
VARDA	ROBERT	ANTHONY
VARGA	STEPHANIE	LAURA
VASSAR	THEODORA	ELINOR
VAVPETIC	VASJA.	
VELDEN	SABINE	VAN DER
VENABLES	JOHN	ANTHONY
VITACCO	MARGOT.	
VITALY	BARBARA	JOAN
VITELLI	ALESSANDRO.	
VON GOETZ	MAXIMILIAN.	
VON LANDSBERG-VELEN	CAROLINE	MARIA ELISBETH
VON MALAPERT-NEUFVILLE	PHILIP	GEORG
VON MALAPERT-NEUFVILLE-REITER	SUSANNE	ELLEN
WADA	SHOHEI	ENDERLE
WAGNER	JOHN	CHARLES
WAHL	MAUREEN	CLAUDE
WALKER	DANVILLE	ANTHONY LUDLOW
WALL	JUDITH	ANNE

Last name	First name	Middle name/initials
WALL	MEGAN	LEAH
WALLACE	ERIK	XOBIAK
WALLACE	KENDRA	ANN
WALSH	MICHAEL	JOHN
WALTERS	JACQUELINE	EVA
WALTHER	MARTEN.	
WALWORTH	CLARE	ALEXANDRA
WANG	DAVID.	
WANG	JIMMY	BOY
WANG	YOUPING.	
WATSON	JILL	MARIE
WATTERS	KATHARINE	DUNCAN
WEBB	CYNTHIA	INGRID
WEBER	KATHRYN	LYNN
WEIJDEGARD	KERSTIN	ULRIKA
WELCKER	ALEXANDER	COLE
WELCKER	KIRBY	ELISE
WELLS	JENNIE	LOUISE
WELSH	VERED	BARBARA
WESTERN	GLEN	KENNETH
WESTMAN	EVA	ISABELLA
WESTON	DONNA	JOHNSON
WESTON	JAKE	RONNEBERG
WEXLER	BARBARA	RUTH
WEXLER-LAYTON	NATHAN	HARRIS
WHITE	STEPHEN	BROADHURST
WHITEHURST	JOEL	DAVID
WHITELAW	ALAN	SCOTT
WHITFIELD	PETER	MARSHALL
WHITLOCK	FRANCESCA	MARGARET ROSAMOND
WHITLOCK	LOUISA	CLARE ANNABEL
WHITMONT	STEPHANIE	POWERS
WICK	DARRELL	ARNE
WICKI	SARAH	PATRICIA QUAIL
WIDE	ANN	KATRIN TIISMANN
WILARAS	WINTEN	OEI
WILDEMAN	WENDY	ROCHELLE
WILLIAMS	JACOB	EDMUND
WILLIAMS	POLLYANN	SARAH
WILLIAMS	SHAWN	ANTHONY
WILSON	CAITLIN	SUMMER
WINIUS	JOANNES	JACOBUS EDILBERTUS
WINWOOD	ELIZABETH	DAWN
WINWOOD	STEPHEN	CALHOUN CRAFTON
WITMER	RICHARD	LYNN
WITTE	MONA	P.
WLODARCZK	PATRICK	ROY
WONG	BENNY.	
WONG	JUSTIN.	
WONG	KELLY	LAN YUH
WONG	MUN	KEAT AGNES
WOO	ELLIOTT	TAK ON
WOOD	VANESSA	JANE
WOOLRIDGE	KAREN	LAUROLEA
WRAY	MARISA	DANIELE
WU	PIHUA.	
WUERMLI	PAUL	GEORG
WURSTBAUER	DENISIA	A.
WYATT	PEGGY	ANN
YABROFF	RUTH	SARA
YAMAMOTO	MASAYUKI	NELSON
YANG	LINDA	HEUN
YANG	YAN.	
YAP	ISABELLE	THERESE GOTIANUN
YAP JR	JOSEPH	PATRICK GOTIANUN
YEH	ANDREW	JER-LIANG
YEH	CHENG	SHENG
YEOUM	CAROL.	
YEUNG	AGNES	PUI LAN
YEUNG	DOUGLAS	SHINGTACK
YEUNG	MARCUS	EUGENE KWOK WO
YEW	CHRISTINE.	

Last name	First name	Middle name/initials
YEW	DALLAS.	
YIN	YUXIN	PETER
YIP	INA	YUI
YONEMASU	TOMOKO	KIM
YOUNG	AMY	HANNAH ELIZABETH
YU	GENE.	
YU	KASUM	CARSON
YU	WAI	WAI CATHERINE
YUEN	JUNE.	
YUN	JOY	YOUNG
ZAININGER	KARL-AUGUSTIN.	
ZAMZAM	HADIF	ABDULLA
ZARAGOZA	ENRIQUE.	
ZEIDY	SUZANNE.	
ZELLER-MOUATTA	NADINE.	
ZHANG	HUI	REN
ZHANG	XI.	
ZHANG	XIAOLING.	
ZHENG	KYLE.	
ZHONG	LELE.	
ZHOU	QUAN.	
ZUBOR	HEDVIG	ELEONORA MICHAELSDOTTER
ZUCKER	SUSAN.	

Dated: April 17, 2017.

Maureen Manieri,

Manager Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2017–09475 Filed 5–9–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Minority Veterans

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Center for Minority Veterans (CMV), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Veterans (''the Committee''). The Committee advises the Secretary on the administration of VA benefits and services to minority Veterans; assesses the needs of minority Veterans with respect to such benefits; and evaluates whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee.

Authority: The Committee was established in accordance with 38 U.S.C. 544 (Public Law 103–446, Sec. 510).

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on May 26, 2017.

ADDRESSES: All nominations should be mailed to the Center for Minority Veterans, Department of Veterans Affairs, 810 Vermont Ave. NW. (00M), Washington, DC 20420, or faxed to (202) 273–7092.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita J. Mullen, Center for Minority Veterans, Department of Veterans Affairs, 810 Vermont Ave. NW. (00M), Washington, DC 20420, Telephone (202) 461–6191. A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. Mullen or by accessing the Web site managed by CMV at *www.va.gov/centerforminorityveterans/Advisory_Committee.asp.*

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to 38 U.S.C. 544. The Committee responsibilities include:

(1) Advising the Secretary and Congress on VA's administration of benefits and provisions of healthcare, benefits, and services to minority Veterans.

(2) Providing an annual report to Congress outlining recommendations, concerns and observations on VA's delivery of services to minority Veterans.

(3) Meeting with VA Officials, Veteran Service Organizations, and other stakeholders to assess the Department's efforts in providing benefits and outreach to minority Veterans.

(4) Making periodic site visits and holding town hall meetings with Veterans to address their concerns.

Management and support services for the Committee are provided by the Center for Minority Veterans (CMV).

Membership Criteria

CMV is requesting nominations for upcoming vacancies on the Committee. The Committee is currently composed of 12 members, in addition to ex-officio members. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including:

(1) Representatives of Veterans who are minority group members;

(2) Individuals who are recognized authorities in fields pertinent to the needs of Veterans who are minority group members;

(3) Veterans who are minority group members and who have experience in a military theater of operations;

(4) Veterans who are minority group members and who do not have such experience and;

(5) Women Veterans who are minority group members recently separated from active military service.

Section 544 defines ''minority group member'' as an individual who is Asian American, Black, Hispanic, Native American (including American Indian, Alaska Native, and Native Hawaiian); or Pacific-Islander American. In accordance with § 544, the Secretary determines the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of

service of any such member may not exceed three years. The Secretary may reappoint any member for additional terms of service.

Professional Qualifications

In addition to the criteria above, VA seeks—

(1) Diversity in professional and personal qualifications;

(2) Experience in military service and military deployments (please identify Branch of Service and Rank);

(3) Current work with Veterans;

(4) Committee subject matter expertise;

(5) Experience working in large and complex organizations;

Requirements for Nomination Submission

Nominations should be type written (one nomination per nominator). Nomination package should include: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone numbers, and email address; (3) the nominee's curriculum vitae, and (4) a summary of the nominee's experience and qualification relative to the *professional qualifications* criteria listed above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of its Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, males & females, racial and ethnic minority groups, and the disabled are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: May 5, 2017.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–09443 Filed 5–9–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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No. 89 May 10, 2017

Part II

The President

Proclamation 9606—National Hurricane Preparedness Week, 2017
Proclamation 9607—Public Service Recognition Week, 2017
Notice of May 8, 2017—Continuation of the National Emergency With Respect to Yemen

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Wednesday, May 10, 2017

Presidential Documents

Title 3—

The President

Proclamation 9606 of May 5, 2017

National Hurricane Preparedness Week, 2017

By the President of the United States of America

A Proclamation

National Hurricane Preparedness Week reminds those of us living in hurricane-prone areas of the need to ready our homes, communities, and families for extreme weather events before hurricane season arrives. Preparing for weather-related disasters can dramatically reduce their impact on you, your family, and your community.

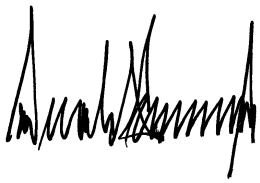
The 2017 hurricane season, which begins June 1 and lasts through November 30, marks the 25th anniversaries of Hurricanes Andrew and Iniki. In August 1992, Hurricane Andrew tore through South Florida before making landfall, again, in Louisiana. It claimed 65 lives, destroyed 25,000 homes, and caused approximately $26 billion in overall damage. A few weeks later, Hurricane Iniki struck the Hawaiian Island of Kauai, killing six, demolishing 1,400 homes, and causing about $1.8 billion in overall damage. The tragic losses caused by those terrible storms remind us of the need to prepare for the destruction hurricanes can bring.

As Hurricane Andrew demonstrated, inland areas are not immune from the destruction hurricanes can bring with them through flooding rains and other related weather events. A National Oceanic and Atmospheric Administration study of Hurricane Andrew revealed that most of the damage it caused was inland from the primary storm surge areas. Just last year, heavy rains from Hurricane Matthew caused destructive flooding and loss of life in the Carolinas, even though the hurricane's eye remained mostly offshore.

This week, through several initiatives, I am encouraging Americans to take the time to prepare for the upcoming hurricane season. After a major disaster, you may not have immediate access to the services you are accustomed to, such as clean water, grocery stores, and emergency services. Hurricane preparedness information provided by the National Weather Service (NWS) and the *Ready* campaign conducted by the Federal Emergency Management Agency (FEMA), both available online, outline important steps you can take right now to safeguard your family, pets, and property. These resources will help you create evacuation and communications plans and assemble a disaster kit of necessary supplies. Developing and implementing these plans will save lives and avoid excess damage.

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 May 7 through May 13, 2017, as National Hurricane Preparedness Week. I call upon Americans living in hurricane-prone areas to observe this week by making use of the online resources provided by the NWS and FEMA and by taking actions to safeguard their families, homes, and businesses from the dangers of hurricanes. I also call upon Federal, State, local, tribal, and territorial emergency management officials to help inform our communities about hurricane preparedness and response, in order to help prevent storm damage and save lives.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09632
Filed 5–9–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

Proclamation 9607 of May 5, 2017

Public Service Recognition Week, 2017

By the President of the United States of America

A Proclamation

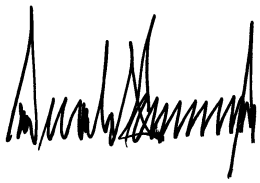
During Public Service Recognition Week, we express gratitude for our civil servants. Their daily effort keeps our Government functioning and helps make our Nation exceptional.

Throughout my first 100 days, I have seen the tremendous work civil servants do to fulfill our duty to the American people. At all levels of government, our public servants put our country and our people first. The hard work of our mail carriers, teachers, firefighters, transit workers, and many more, creates an environment that allows individuals and companies to thrive.

To empower our civil servants to best help others, the Government must always operate more efficiently and more securely. In March, I issued an Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch. I am counting on our civil servants to seize upon that order and make our Government dramatically more accountable, effective, and efficient, by going beyond the modernization efforts of the past and re-examining the operational core of our executive departments and agencies. Together, through these and other efforts, we will fulfill our responsibilities to make our Government work better for the American people.

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 May 7 through May 13, 2017, as Public Service Recognition Week. I call upon Americans and all Federal, State, tribal, and local government agencies to recognize the dedication of our Nation's public servants and to observe this week through appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–09634
Filed 5–9–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

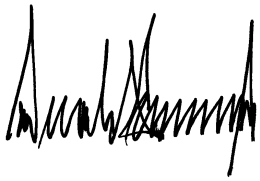
Notice of May 8, 2017

Continuation of the National Emergency With Respect to Yemen

On May 16, 2012, by Executive Order 13611, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Yemen and others. These actions and policies threatened Yemen's peace, security, and stability, including by obstructing the political process in Yemen and the implementation of the agreement of November 23, 2011, between the Government of Yemen and those in opposition to it, which provided for a peaceful transition of power that meets the legitimate demands and aspirations of the Yemeni people for change.

The actions and policies of certain members of the Government of Yemen and others in threatening Yemen's peace, security, and stability continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on May 16, 2012, to deal with that threat must continue in effect beyond May 16, 2017. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13611.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,

May 8, 2017.

[FR Doc. 2017–09635

Filed 5–9–17; 11:15 am]

Billing code 3295–F7–P

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Part III

The President

Notice of May 9, 2017—Continuation of the National Emergency With Respect to the Actions of the Government of Syria

Notice of May 9, 2017—Continuation of the National Emergency With Respect to the Central African Republic

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Presidential Documents

Title 3—

The President

Notice of May 9, 2017

Continuation of the National Emergency With Respect to the Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, Executive Order 13338 authorized the blocking of property of certain persons and prohibited the exportation or reexportation of certain goods to Syria. The national emergency was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012.

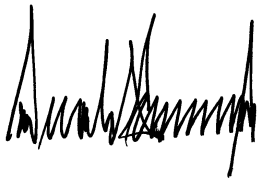
The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq.

The regime's brutality and repression of the Syrian people, who have been calling for freedom and a representative government, not only endangers the Syrian people themselves, but also generates instability throughout the region. The Syrian regime's actions and policies, including with respect to chemical and biological weapons, supporting terrorist organizations, and obstructing the Lebanese government's ability to function effectively, continue to foster the rise of extremism and sectarianism and pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared on May 11, 2004, and the measures to deal with that emergency adopted on that date in Executive Order 13338; on April 25, 2006, in Executive Order 13399; on February 13, 2008, in Executive Order 13460; on April 29, 2011, in Executive Order 13572; on May 18, 2011, in Executive Order 13573; on August 17, 2011, in Executive Order 13582; on April 22, 2012, in Executive Order 13606; and on May 1, 2012, in Executive Order 13608, must continue in effect beyond May 11, 2017. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to the actions of the Government of Syria.

In addition, the United States condemns the Assad regime's use of brutal violence and human rights abuses and calls on the Assad regime to stop its violence against the Syrian people, uphold the Cessation of Hostilities, enable the delivery of humanitarian assistance, and allow a political transition in Syria that will forge a credible path to a future of greater freedom, democracy, opportunity, and justice.

The United States will consider changes in the composition, policies, and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 9, 2017.

[FR Doc. 2017–09653
Filed 5–9–17; 12:30 pm]
Billing code 3295–F7–P

Presidential Documents

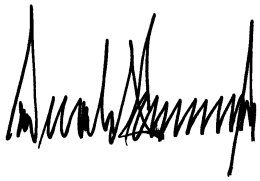
Notice of May 9, 2017

Continuation of the National Emergency With Respect to the Central African Republic

On May 12, 2014, by Executive Order 13667, the President declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to the Central African Republic, which has been marked by a breakdown of law and order, intersectarian tension, widespread violence and atrocities, and the pervasive, often forced recruitment and use of child soldiers, and which threatens the peace, security, or stability of the Central African Republic and neighboring states.

The situation in and in relation to the Central African Republic continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on May 12, 2014, to deal with that threat must continue in effect beyond May 12, 2017. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13667.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 9, 2017.

[FR Doc. 2017–09656
Filed 5–9–17; 12:30 pm]
Billing code 3295–F7–P

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