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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2018–0374; Special Conditions No. 23–288–SC]

Special Conditions: St. Louis Helicopter, LLC; Textron Aviation B300, B300C, B300C (MC–12W), and B300C (UC–12W) Airplanes; Installation of Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Textron Aviation models B300, B300C, B300C (MC–12W), and B300C (UC–12W) series airplanes. The airplane, as modified by St. Louis Helicopter LLC, will have a novel or unusual design feature associated with the installation of a rechargeable lithium battery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 3, 2018.

We must receive your comments by June 18, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0374 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 of 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://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to 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: Ruth Hirt, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, AIR–694, 901 Locust, Room 301, Kansas City, MO; telephone (816) 329–4108; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the FAA has determined, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary because 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 that good cause exists for making these special conditions effective upon issuance.

Special conditions No.	Company/airplane model
23–15–01–SC [1]	Kestrel Aircraft Company/Model K–350.
23–09–02–SC [2]	Cessna Aircraft Company/Model 525C (CJ4).
23–08–05–SC [3]	Spectrum Aeronautical, LLC/Model 40.

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 ask that you send us two copies of written comments.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On May 23, 2017, St. Louis Helicopter LLC (St. Louis Helicopter) applied for a supplemental type certificate (STC) to install a rechargeable lithium battery on the Textron Aviation, models B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes. These are commuter category airplanes with a maximum of 17 seats (including crew), maximum operating altitude of 35,000 feet, and powered by two Pratt & Whitney Canada PT6A–60 engines or two PT6A–67 engines, with 15,000 pounds maximum takeoff weight.

The current regulatory requirements for part 23 airplanes do not contain adequate requirements for use of rechargeable lithium batteries in

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/39B156C006EB842E86257EF3004BB13C?OpenDocument&Highlight=installation%20of%20rechargeable%20lithium%20battery.*

[2] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/902232309C19F0D4862575CB0045AC0D?OpenDocument&Highlight=installation%20of%20rechargeable%20lithium%20battery.*

[3] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSC.nsf/0/28E630294DCC27B986257513005968A3?OpenDocument&Highlight=installation%20of%20rechargeable%20lithium%20battery.*

airborne applications. This type of battery possesses certain failure and operational characteristics with maintenance requirements that differ significantly from that of the nickel-cadmium (Ni-Cd) and lead-acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes. Therefore, the FAA is proposing this special condition to address—

- All characteristics of the rechargeable lithium batteries and their installation that could affect safe operation of the modified B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes; and
- Appropriate Instructions for Continued Airworthiness (ICA) that include maintenance requirements to ensure the availability of electrical power from the batteries when needed.

Type Certification Basis

Under the provisions of § 21.101, St. Louis Helicopter must show that the B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. A24CE [4] or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference are located on pages 35 through 37 in A24CE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

Special conditions are initially applicable to the models for which they are issued. Should the applicant apply for an STC to modify any other model(s) included on the same type certificate to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to the other model(s) under § 21.101.

[4] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/0/c76fc5b6f3cf8a828625825600607 51e/$FILE/A24CE_Rev_119.pdf.*

Novel or Unusual Design Features

The Textron Aviation B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes will incorporate the following novel or unusual design features:

The installation of a rechargeable lithium battery as a main or engine start aircraft battery.

Discussion

The applicable regulations governing the installation of batteries in general aviation airplanes were derived from CAR 3 as part of the recodification that established 14 CFR part 23. The battery requirements identified in § 23.1353 were a rewording of the CAR requirements. Additional rulemaking activities—resulting from increased incidents of Ni-Cd battery fire or failures—incorporated § 23.1353(f) and (g), amendments 23–20 and 23–21, respectively. The FAA did not envision the introduction of lithium battery installations at the time these regulations were published.

The proposed use of rechargeable lithium batteries prompted the FAA to review the adequacy of these existing regulations. We determined the existing regulations do not adequately address the safety of lithium battery installations.

Current experience with rechargeable lithium batteries in commercial or general aviation is limited. However, other users of this technology—ranging from personal computers, to wireless telephone manufacturers, to the electric vehicle industry—have noted safety problems with rechargeable lithium batteries. These problems include overcharging, over-discharging, flammability of cell components, cell internal defects, and those resulting from exposure to extreme temperatures as described in the following paragraphs.

1. *Overcharging:* In general, rechargeable lithium batteries are significantly more susceptible than their Ni-Cd or lead-acid counterparts to thermal runway, which is an internal failure that can result in self-sustaining increases in temperature and pressure. This is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. *Over-discharging:* Discharge of some types of rechargeable lithium battery cells beyond the manufacturer's recommended specification can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status—a problem shared with Ni-Cd batteries. In addition, over-discharging has the potential to lead to an unsafe condition (creation of dendrites that could result in internal short circuit during the recharging cycle).

3. *Flammability of Cell Components:* Unlike Ni-Cd and lead-acid batteries, some types of rechargeable lithium batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire, if there is a breach of the battery container.

4. *Cell Internal Defects:* The rechargeable lithium batteries and rechargeable battery systems have a history of undetected cell internal defects. These defects may or may not be detected during normal operational evaluation, test, and validation. This may lead to an unsafe condition during in service operation.

5. *Extreme Temperatures:* Exposure to an extreme temperature environment has the potential to create major hazards. Care must be taken to ensure that the lithium battery remains within the manufacturer's recommended specification.

Applicability

As discussed above, these special conditions are applicable to the B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes. Should St. Louis Helicopter apply at a later date for an STC to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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 subject contained herein. Therefore, notice and opportunity for prior public comment hereon are unnecessary and the FAA finds good cause, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3), making these special conditions effective upon issuance. 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 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44704; Pub. L. 113–53, 127 Stat 584 (49 U.S.C. 44704) note; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

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 B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes modified by St. Louis Helicopter, LLC.

1. Installation of Lithium Battery

The FAA adopts that the following special conditions be applied to lithium battery installations on the Textron Aviation models B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes in lieu of the requirements § 23.1353 (a), (b), (c), (d), and (e), amendment 23–49.

Lithium battery installations on the models B300, B300C, B300C (MC–12W), and B300C (UC–12W) airplanes must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during—

i. Normal operations;

ii. Any probable failure conditions of charging or discharging or battery monitoring system; and

iii. Any failure of the charging or battery monitoring system not shown to be extremely remote.

(2) The rechargeable lithium battery installation must be designed to preclude explosion or fire in the event of 1(1)ii and 1(1)iii failures.

(3) Design of the rechargeable lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(4) No explosive or toxic gasses emitted by any rechargeable lithium battery in normal operation or as the result of any failure of the battery charging system, monitoring system, or battery installation, which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(5) Installations of rechargeable lithium batteries must meet the requirements of § 23.863(a) through (d), amendment 23–34.

(6) No corrosive fluids or gases that may escape from any rechargeable lithium battery, may damage surrounding structure or any adjacent systems, equipment, electrical wiring, or the airplane in such a way as to cause a major or more severe failure condition, in accordance with § 23.1309, amendment 23–49, and applicable regulatory guidance.

(7) Each rechargeable lithium battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(8) Rechargeable lithium battery installations must have—

i. A system to automatically control the charging rate of the battery to prevent battery overheating and overcharging; and either

ii. A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition; or

iii. A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(9) Any rechargeable lithium battery installation, the function of which is required for safe operation of the aircraft, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state of charge of the batteries has fallen below levels considered acceptable for dispatch (see note 1) of the aircraft.

Note 1: Reference § 23.1353(h) for dispatch consideration.

(10) The Instructions for Continued Airworthiness (ICA) required by § 23.1529 must contain maintenance requirements (see note 2) to assure that the battery has been sufficiently charged (see note 3) at appropriate intervals specified by the battery manufacturer and the equipment manufacturer that contain the rechargeable lithium battery or rechargeable lithium battery system. The lithium rechargeable batteries and lithium rechargeable battery systems must not degrade below specified ampere-hour levels sufficient to power the aircraft system. The ICA must also contain procedures for the maintenance of replacement batteries (see note 4) to prevent the installation of batteries that have degraded charge retention ability or other damage due to prolonged storage at a low state of charge. Replacement batteries must be of the same manufacturer and part number as approved by the FAA.

Note 2: Maintenance requirements include procedures that—

(a) Check battery capacity, charge degradation at manufacturers recommended inspection intervals; and

(b) Replace batteries at manufacturers recommended replacement schedule/time to prevent age related degradation.

Note 3: The term ''sufficiently charged'' means that the battery must retain enough charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged.

A battery cell may be damaged by low charge (*i.e.,* below certain level), resulting in a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

Note 4: Replacement battery in spares storage may be subject to prolonged storage at a low state of charge.

Issued in Kansas City, Missouri on April 23, 2018.

Pat Mullen,

Manager, Small Airplane Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–09350 Filed 5–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. FDA–2018–N–1438]

RIN 0910–AI04

Crabmeat; Amendment of Common or Usual Name Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the common or usual name

regulation for crabmeat by replacing ''brown king crabmeat'' with ''golden king crabmeat'' as the common or usual name for crabmeat derived from the species *Lithodes aequispinus*. We are taking this action due to a recently enacted law. We are also correcting an error in the placement of a scientific term, which is editorial in nature.

DATES: This rule is effective May 3, 2018. The compliance date for this rule is January 1, 2020.

ADDRESSES: For access to the docket, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Steven Bloodgood, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–5316, *Steven.Bloodgood@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

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I. General Overview of Final Rule

This rule amends § 102.50 (21 CFR 102.50) to designate ''golden king crabmeat'' as the sole common or usual name of crabmeat derived from the species *Lithodes aequispinus*. The regulation at § 102.50 currently lists ''brown king crabmeat'' as the common or usual name of crabmeat derived from the species *Lithodes aequispina*. In addition to replacing the common or usual name, we are revising the scientific name to read as *Lithodes aequispinus,* in accordance with a recently enacted law designating the acceptable market name of the species as ''golden king crab.'' We are also correcting § 102.50 so that *Paralithodes platypus* appears under the ''Scientific name of crab'' column for King crabmeat.

II. Background and Legal Authority

In the **Federal Register** of July 3, 1995 (60 FR 34459), we published a final rule amending the common or usual name provisions for crabmeat, to provide that the common or usual name of crabmeat derived from the species *Lithodes aequispina* is ''brown king crabmeat.''

On May 5, 2017, the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), was signed into law. Section 774 of the Consolidated Appropriations Act, 2017, provides that, for purposes of applying the Federal Food, Drug, and Cosmetic Act (FD&C Act), the acceptable market name of *Lithodes aequispinus* is ''golden king crab.''

The final rule amends § 102.50 to reflect the common or usual name of crabmeat derived from *Lithodes aequispinus* as provided by the Consolidated Appropriations Act, 2017, and to revise the scientific name of the species. The final rule also corrects § 102.50 to move the scientific name for King crabmeat, *Paralithodes platypus,* from the ''Common or usual name of crabmeat'' column to the ''Scientific name of crab'' column.

FDA finds good cause for issuing this amendment as a final rule without notice and comment because this amendment only updates the regulation to align with the law enacted by the Consolidated Appropriations Act, 2017 (5 U.S.C. 553(b)(B)). (''[W]hen regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary.'' *Gray Panthers Advocacy Committee* v. *Sullivan,* 936 F.2d 1284, 1291 (DC Cir. 1991); see also *Komjathy* v. *Nat. Trans. Safety Bd.,* 832 F.2d 1294, 1296 (DC Cir. 1987), *cert. denied,* 486 U.S. 1057 (1988) (when a rule ''does no more than repeat, virtually verbatim, the statutory grant of authority,'' notice-and-comment procedures are not required)).) Therefore, we are issuing this amendment as a final rule, and publication of this document constitutes final action under the Administrative Procedure Act (APA) (5 U.S.C. 553).

In addition, we find good cause for this amendment to become effective on the date of publication of this action. The APA allows an effective date less than 30 days after publication as ''provided by the agency for good cause found and published with the rule'' (5 U.S.C. 553(d)(3)). A delayed effective date is unnecessary in this case because the new requirements regarding golden king crab are already effective as a matter of law and because moving the scientific name for King crabmeat is a ministerial action. Therefore, we find good cause for this amendment to become effective on the date of publication of this action.

III. Compliance Date

With respect to a compliance date, we intend that any adjustments to a product's labeling occur in a manner consistent with our uniform compliance date (see 81 FR 85156, November 25, 2016). Thus, the compliance date is January 1, 2020.

IV. Economic Analysis of Impacts

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

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. We estimate that the mean cost per crab covered by the final rule is $0.23 (2016$). We estimate that the revenue per crab covered by the final rule ranges from $17.65 to $99.42 (2016$). Because the cost per crab covered by the final rule as a percentage of the revenue per crab covered by the final rule is small, ranging from 0.2 percent to 1.3 percent, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $148 million, using the most current (2016) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule.

The full analysis of economic impacts is available in the docket for this final rule (Ref. 1).

V. Analysis of Environmental Impact

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

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

IX. References

The following reference is on display in the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, ''Crabmeat; Amendment of Common or Usual Name Regulation: Final Regulatory Impact Analysis,'' 2017. Also available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects in 21 CFR Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Oils and fats, Onions, Potatoes, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 102 is amended as follows:

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 371.

■ 2. In § 102.50 revise the table to read as follows:

§ 102.50 Crabmeat.

* * * * *

Scientific name of crab	Common or usual name of crabmeat
Chionoecetes opilio, Chionoecetes tanneri, Chionoecetes bairdii, and Chionoecetes angulatus.	Snow crabmeat.
Erimacrus isenbeckii	Korean variety crabmeat or Kegani crabmeat.
Lithodes aequispinus	Golden King crabmeat.
Paralithodes brevipes	King crabmeat or Hanasaki crabmeat.
Paralithodes camtschaticus and Paralithodes platypus.	King crabmeat.

Dated: April 27, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–09371 Filed 5–2–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9744]

RIN 1545–BJ45, 1545–BJ50, 1545–BJ62, 1545–BJ57

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB72

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 146, and 147

[CMS–9993–N]

RIN 0938–AS56

Clarification of Final Rules for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections Under the Affordable Care Act

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; and Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Final rule; clarification.

SUMMARY: On November 18, 2015, the Departments of Labor, Health and Human Services, and the Treasury (the Departments) published a final rule in the **Federal Register** titled ''Final Rules for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections Under the Affordable Care Act'' (the November 2015 final rule), regarding, in part, the coverage of emergency services by non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage, including the requirement that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage limit cost-sharing for out-of-network emergency services and, as part of that rule, pay at least a minimum amount for out-of-network emergency services. The American College of

Emergency Physicians (ACEP) filed a complaint in the United States District Court for the District of Columbia, which on August 31, 2017 granted in part and denied in part without prejudice ACEP's motion for summary judgment and remanded the case to the Departments to respond to the public comments from ACEP and others. In response, the Departments are issuing this notice of clarification to provide a more thorough explanation of the Departments' decision not to adopt recommendations made by ACEP and certain other commenters in the November 2015 final rule.

DATES: This clarification is applicable beginning May 3, 2018.

FOR FURTHER INFORMATION CONTACT: Amber Rivers, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Dara R. Alderman, Internal Revenue Service, Department of the Treasury, at (202) 317–5500; and Katherine Carver, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786–1565.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Rulemaking at Issue

i. Statutory Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148), was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively referred to as ''PPACA'' in this document. The PPACA reorganized, amended, and added to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act). PPACA also added section 715 to the Employee Retirement Income Security Act (ERISA) and section 9815 to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. Accordingly, sections 2701 through 2728 of the PHS Act are incorporated into the Code and ERISA.

Section 2719A of the PHS Act, which is entitled ''Patient Protections,'' provides requirements relating to coverage of emergency services for non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage [1] and states, in general, that if a group health plan, or a health insurance issuer offering group or individual health insurance coverage, provides or covers any benefits with respect to services in an emergency department of a hospital, the plan or issuer shall cover emergency services—(A) without the need for any prior authorization determination; (B) whether the health care provider furnishing such services is a participating provider with respect to such services; (C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee—(i) by a nonparticipating health care provider with or without prior authorization; or (ii)(I) such services will be provided without imposing any requirement under the plan for prior authorization of services or any limitation on coverage where the provider of services does not have a contractual relationship with the plan for the providing of services that is more restrictive than the requirements or limitations that apply to emergency department services received from providers who do have such a contractual relationship with the plan; and (II) if such services are provided out-of-network, the cost-sharing requirement (expressed as a copayment amount or coinsurance rate) is the same requirement that would apply if such services were provided in-network.

Therefore, among other things, the statute requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage that cover emergency services to do so even if the provider is not one of the plans' or issuers' ''participating provider[s].'' [2] In addition, section 2719A of the PHS Act requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to apply the same cost-sharing requirement (expressed as copayments and coinsurance) for emergency services provided out-of-network as emergency services provided in-network; however, the statute does not expressly address how much the out-of-network provider of emergency services must be paid for performing such services by the non-grandfathered group health plan or health insurance issuer offering non-grandfathered group or individual health insurance coverage.

As background, the amount an out-of-network provider may charge for emergency services may exceed the group health plan's or health insurance issuer's ''allowed amount'' (the ''[m]aximum amount on which payment is based for covered health care services'').[3] The allowed amount may be subject to deductibles and other cost-sharing in terms of a fixed-amount per service and/or a coinsurance percentage of the allowed amount. In circumstances in which a provider's charge exceeds the allowed amount, some states allow an out-of-network provider to ''balance bill'' the patient for the amount of the provider's charge that exceeds the allowed amount.

Section 2719A of the PHS Act does not prohibit an out-of-network provider from balance billing a participant or beneficiary because although it includes a cost-sharing rule, ''cost sharing'' is a statutorily defined term that ''does not include . . . balance billing amounts for non-network providers'' and the cost-sharing requirement in section 2719A(b)(1)(C)(ii)(II) of the PHS Act applies to cost sharing ''expressed as a copayment amount or coinsurance rate.'' [4]

ii. The Departments' Regulation and Related Comments

On June 28, 2010, the Departments published an interim final rule (IFR) in the **Federal Register** titled ''Patient Protection and Affordable Care Act; Requirements for Group Health Plans and Health Insurance Issuers Under the Patient Protection and Affordable Care Act Relating to Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections,'' 75 FR 37188 (the June 2010 IFR). The June 2010 IFR preamble on section 2719A of the PHS Act stated, in part, that, because the statute does not require plans or issuers to cover balance billing amounts, and does not prohibit balance billing, even where the protections in the statute apply, patients may be subject to balance billing. It would defeat the purpose of the protections in the statute if a plan or

[1] Section 2719A of the PHS Act also provides, for non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage, rules regarding designation of primary care providers, access to pediatric care, and patient access to obstetrical and gynecological care. This document does not address those aspects of section 2719A of the PHS Act.

[2] *See* section 2719A(b)(1)(B) of the PHS Act.

[3] *See* definition of ''allowed amount'' and ''balance billing'' in the Uniform Glossary of Health Care Coverage and Medical Terms, *https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/sbc-uniform-glossary-of-coverage-and-medical-terms-final.pdf.*

[4] *See* PPACA section 1302(c)(3)(B). *See* also 80 FR 72192, 72212–13 (Nov. 18, 2015).

issuer paid an unreasonably low amount to a provider, even while limiting the coinsurance or copayment associated with that amount to in-network amounts. To avoid the circumvention of the protections of section 2719A of the PHS Act, it is necessary that a reasonable amount be paid before a patient becomes responsible for a balance billing amount. Thus, these interim final regulations require that a reasonable amount be paid for services by some objective standard. In establishing the reasonable amount that must be paid, the Departments had to account for wide variation in how plans and issuers determine both in-network and out-of-network rates. For example, for a plan using a capitation arrangement to determine in-network payments to providers, there is no in-network rate per service.

Accordingly, these interim final regulations considered three amounts: The in-network rate, the out-of-network rate, and the Medicare rate. Specifically, a plan or issuer satisfies the copayment and coinsurance limitations in the statute if it provides benefits for out-of-network emergency services in an amount equal to the greatest of three possible amounts—(1) The amount negotiated with in-network providers for the emergency service furnished; (2) The amount for the emergency service calculated using the same method the plan generally uses to determine payments for out-of-network services (such as the usual, customary, and reasonable charges) but substituting the in-network cost-sharing provisions for the out-of-network cost-sharing provisions; or (3) The amount that would be paid under Medicare for the emergency service. Each of these three amounts is calculated excluding any in-network copayment or coinsurance imposed with respect to the participant, beneficiary, or enrollee.[5]

This is sometimes referred to as the ''Greatest of Three'' or the ''GOT'' regulation because it sets a floor on the amount non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage are required to pay for out-of-network emergency services under this provision at the greatest of the three listed amounts.

During the comment period for the June 2010 IFR, some commenters were in favor of the GOT regulation while others expressed concerns. Several commenters, including ACEP, objected to the second prong of the GOT regulation, which relates to the method the plan generally uses to determine payments for out-of-network services, such as the usual, customary, and reasonable amount (henceforth referred to as the UCR amount). ACEP's August 3, 2010 comment letter[6] stated the following:

> . . . [W]e appreciate the clearly stated acknowledgement that allowing plans and insurersto pay emergency physicians whatever they see fit defeats the purpose of protecting patients from potentially large bills. In that light, we also support development of an objective standard to establish 'fair payment.' Insurers know that emergency physicians will see everyone who comes to the ED due to EMTALA responsibilities, and many leverage that fact to impose extremely low reimbursement rates. While a large majority of our members participate in nearly every plan or insurer network in their area, the primary reason they cite for not joining a plan's network is that the plan has arbitrarily offered an in-network payment rate that fails to cover the costs of providing the service. This forces the physicians to balance bill the patients, which often results in an unsatisfactory experience for everyone but the insurer. . .

As noted in the IF rule, 'there is wide variation in how plans and issuers determine in [network] and out-of-network rates.' The term 'reasonable' is in the eye of the beholder. For many years, usual and customary rates referred to charges or a proportion of charges. This has changed in recent years and physicians, particularly emergency physicians, have had problems with the 'black box' approach that commercial insurers have used to determine [the] usual and customary 'rates' for out-of-network providers. At this time, we are unaware of a national database that is widely available and provides timely data for objective comparisons of charges and/or costs that could be used to implement this part of the regulation. A new database, perhaps the FAIR Health data[base] that is currently being developed as a result of the settlement with Ingenix, may prove to be more timely and accurate, but any database used to establish usual and customary reasonable rates will require transparent validation, monitoring, and active enforcement by state and federal insurance officials.''

Other groups, such as Advocacy for Patients with Chronic Illness, Inc. and Lybba, the Emergency Department Practice Management Association, the American Medical Association, the American Hospital Association, the Texas Medical Association, the Healthcare Association of New York State, and the California Chapter of ACEP, submitted similar comments expressing their concern about the lack of transparency and potential for manipulation of rates under the second prong of the GOT regulation. Like ACEP, several of these commenters referenced the FAIR Health database as a potential alternative solution.[7]

On November 18, 2015, the Departments finalized the regulation under section 2719A of the PHS Act, including the GOT regulation (80 FR 72192). The November 2015 final rule adopted the GOT regulation without substantive revision from the June 2010 IFR and incorporated a clarification that had been issued in subregulatory guidance.[8] In the November 2015 final rule, the Departments reiterated the need for the GOT regulation, and in response to the comments described above regarding the GOT regulation, the Departments stated that ''[s]ome commenters expressed concern about the level of payment for out-of-network emergency services and urged the Departments to require plans and issuers to use a transparent database to determine out-of-network amounts. The Departments believe that this concern is addressed by our requirement that the amount be the greatest of the three amounts specified in [the GOT regulation].''[9]

B. Other Guidance

In response to concerns about transparency with respect to the second prong of the GOT regulation raised by ACEP in its comment and in subsequent communications to the Departments, on April 20, 2016, the Departments issued Frequently Asked Questions About Affordable Care Act Implementation Part 31, Mental Health Parity Implementation, and Women's Health

[5] 75 FR at 37194 (footnote omitted). For the interim final regulation text, see 75 FR at 37225, 37232, and 37238.

[6] Available at *https://www.regulations.gov/contentStreamer?documentId=EBSA-2010-0016-0022&attachmentNumber=1&contentType=pdf.*

[7] The FAIR Health Database was created by FAIR Health, an independent nonprofit that collects data for and manages the nation's largest database of privately billed health insurance claims. *See https://www.fairhealth.org/about-us.*

[8] The final regulations incorporated guidance that had been provided in FAQs about Affordable Care Act Implementation (Part I), Q15, available at *www.dol.gov/ebsa/faqs/faq-aca.html* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs.html.* The FAQ and final regulations provide that if state law prohibits balance billing, or in cases in which a group health plan or health insurance issuer is contractually responsible for balance billing amounts, plans and issuers are not required to satisfy the GOT regulation, but may not impose any copayment or coinsurance requirement for out-of-network emergency services that is higher than the copayment or coinsurance requirement that would apply if the services were provided in-network. *See* 26 CFR 54.9815–2719A(b)(3)(iii); 29 CFR 2590.715–2719A(b)(3)(iii); and 45 CFR 47.138(b)(3)(iii).

[9] 80 FR 72192, 72213 (Nov. 18, 2015).

and Cancer Rights Act Implementation, which addressed, in part, the GOT regulation.[10] In Question & Answer number 4, the Departments clarified that a group health plan or health insurance issuer of group or individual health insurance coverage is required to disclose how it calculates the amounts under the GOT regulation, including the UCR amount. These disclosure requirements would also apply to a request for disclosure of payment amounts for in-network providers. Specifically, for group health plans subject to ERISA, documentation and data used to calculate each of the amounts under the GOT regulations for out-of-network emergency services, including the UCR amount, are considered to be instruments under which the plan is established or operated and would be subject to the disclosure provisions under section 104(b) of ERISA and 29 CFR 2520.104b–1, which generally require that such information be furnished to plan participants (or their authorized representatives) within 30 days of request.[11] In addition, the Department of Labor claims procedure regulations, as well as the internal claims and appeals and external review requirement under section 2719 of the PHS Act, which apply to both ERISA and non-ERISA non-grandfathered group health plans and health insurance issuers of non-grandfathered group or individual coverage, set forth rules regarding claims and appeals, including the right of a claimant (or the claimant's authorized representative) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits, and a failure to provide or make payment of a claim in whole or in part is an adverse benefit determination.[12]

[10] *See https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-31.pdf,* or *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-31_Final-4-20-16.pdf.*

[11] *See* DOL Advisory Opinion 96–14A (July 31, 1996). *See* also FAQs about Affordable Care Act Implementation (Part XXIX) and Mental Health Parity Implementation, Q12, available at *www.dol.gov/ebsa/faqs/faq-aca29.html* and *www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-XXIX.pdf*, providing that a plan's or issuer's characterization of information as proprietary or commercially valuable cannot be a basis for non-disclosure.

[12] 29 CFR 2560.503–1, 26 CFR 54.9815–2719, 29 CFR 2590.715–2719, and 45 CFR 147.136. For additional requirements for the full and fair review standard that applies under PHS Act section 2719, in addition to 29 CFR 2560.503–1(h)(2), see 26 CFR 54.9815–2719(b)(2)(ii)(C), 29 CFR 2590.715–2719(b)(2)(ii)(C), and 45 CFR 147.136(b)(2)(ii)(C) and (b)(3)(ii)(C).

C. The Court's Remand Order

On May 12, 2016, ACEP filed a lawsuit against the Departments, asserting that the final GOT regulation should be invalidated because it does not ensure a reasonable payment for out-of-network emergency services as required by the statute, and that the Departments did not respond meaningfully to ACEP's comments about purported deficiencies in the regulation.[13]

Following briefing by both parties, on August 31, 2017, the United States District Court for the District of Columbia issued a memorandum opinion that granted in part and denied in part without prejudice ACEP's motion for summary judgment, and remanded the case to the Departments for further explanation of the November 2015 final rule.[14] The court concluded that the Departments did not adequately respond to comments and proposed alternatives submitted by ACEP and others regarding perceived problems with the GOT regulation. In particular, the court stated that the Departments' response in the November 2015 final rule ''to numerous comments raising specific concerns about the method used in the GOT regulation for determining the amounts insurers would be required to pay for out-of-network emergency medical services—*e.g.,* the rates' lack of transparency or their vulnerability to manipulation'' did not ''seriously respond to the actual concerns raised about the particular rates, and it ignore[d] altogether the proposed alternative of using a database to set payment.'' The court stated that its holding was ''a narrow one,'' relating ''only to the sufficiency of the Departments' response to comments and proposed alternatives.''

The court did not vacate the November 2015 final rule but ordered that ''this matter is remanded to the Departments of Health and Human Services, Labor, and the Treasury so that they can adequately address the comments and proposals at issue in this case. On remand, the Departments are free to exercise their discretion to supplement their explanation as they deem appropriate and to reach the same or different ultimate conclusions. At a minimum; however, the Departments are required to respond to [ACEP's] comments and proposals in a reasoned manner that 'enable[s] [the Court] to see what major issues of policy were ventilated . . . and why the agency reacted to them as it did.' '' [15]

The Departments are issuing this document to provide the additional consideration required by the court's remand order. Specifically, the Departments are responding more fully to ACEP's written comment dated August 3, 2010 in reference to the June 2010 IFR.

[13] *See https://www.acep.org/Legislation-and-Advocacy/Regulatory/ACEPvsHHS_051216/.*

[14] *See American College of Emergency Physicians* v. *Price, et al., 264 F. Supp. 3d 89 (D.D.C. 2017).*

II. Further Consideration of the Departments' Final Rule in Response to the Court's Remand Order

In light of the statutory language in section 2719A of the PHS Act and the totality of the comments received in response to the June 2010 IFR, the Departments continue to believe that the implementing regulations provide a reasonable and transparent methodology to determine appropriate payments by non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage for out-of-network emergency services. ACEP's proposal that the GOT regulation require the development of a new database and/or utilization of a publicly-available database to set UCR amounts would require the Departments to extend the scope of their authority under section 2719A of the PHS Act beyond the establishment of a minimum payment amount to facilitate the cost-sharing requirements in section 2719A(b) of the PHS Act, to the development of specific provider reimbursement rates for group health plans and health insurance issuers, which is an area that, up to this point, has been reserved for the states, issuers, and health plans. Accordingly, the Departments decline to adopt such a requirement. Finally, even if the Departments were prepared to extend their authority in this manner, creating and maintaining a database or assessing, validating, and monitoring publicly available databases would be costly and time-consuming, and there is no indication in either case that such a database would provide a better method for determining UCR amounts than the methods group health plans and health insurance issuers currently use.

A. GOT Regulation Is Reasonable and Transparent

The Departments believe that ACEP and other commenters did not provide adequate information to support their assertion that the methods used for determining the minimum payment for

[15] *Id.*

out-of-network emergency services under the GOT regulation are not sufficiently transparent or reasonable. In developing the GOT regulation, the Departments accounted for wide variation in how group health plans and health insurance issuers determine both in-network and out-of-network rates, and made a determination to base the GOT criteria on existing provisions of federal law. The Departments have not received any information regarding ACEP's concerns, as part of the comment record or otherwise, that persuaded us that these standards are insufficiently transparent or otherwise unreasonable, and we conclude that the methodology for determining payment amounts under all three prongs of the GOT regulation is sufficiently transparent and reasonable.

Under the GOT regulation, the three prongs work together to establish a floor on the payment amount for out-of-network emergency services, and each state generally retains authority to set higher amounts for health insurance issued within the state. The GOT regulation requires that a group health plan or health insurance issuer must pay the highest amount determined under the three prongs, which reflect amounts that the federal government itself or group health plans and health insurance issuers have established as reasonable.

The Departments determined the GOT methodology was sufficiently transparent by taking into account other federal laws which require disclosure in certain circumstances. Specifically, a group health plan subject to ERISA must disclose how it calculates a payment amount under the GOT regulation, including payment amounts to in-network providers, and the method the group health plan or health insurance issuer used to determine the UCR amount to a claimant or the claimant's authorized representative.[16]

Additionally, as described above, under the internal claims and appeals and external review requirements of section 2719 of the PHS Act, which apply to plans that are subject to the protections of section 2719A of the PHS Act, a claimant (or the claimant's authorized representative) upon appeal of an adverse benefit determination must be provided reasonable access to, and copies of, all documents, records, and other information relevant to the claim for benefits, including information about the plan's determination of the UCR amount. A failure to provide or make payment of a claim in whole or in part is considered an adverse benefit determination.[17]

Further, the Medicare rate is transparent because the Medicare statute's provisions on setting physician payment rates are objective and detailed, and provide payment at a level that reflects the relative value of a service.[18] Medicare rates for physicians' services are established and reviewed every year through a rulemaking in which all physicians and other stakeholders are invited to submit public comment on the agency's proposed calculations.[19]

As a result, patients who are to be protected by the statute have a right to transparent access to the calculations used to arrive at the allowed amount for out-of-network emergency services, and a provider can obtain this information as a patient's authorized representative.[20] To the extent that a provider is not able to obtain these calculations, the Departments believe that the patients' ability to obtain and to potentially challenge the information through litigation or the appeals process creates adequate safeguards with respect to ACEP's concerns regarding health insurance issuer manipulation of UCR amounts. This provides sufficient protections, especially in light of the focus of section 2719A of the PHS Act on the protection of patients, rather than physicians. For all these reasons, the Departments believe that the methodology in the GOT regulations is sufficiently transparent and reasonable.

B. Creation of a Database or Use of a Publicly Available Database Is Problematic

The creation and use of ACEP's proposed database on payments and charges would be problematic in a number of ways. The establishment and maintenance of a publicly available database would be time-consuming, would require contracting assistance, and would be costly and burdensome to maintain. Furthermore, there is no indication that such a database would be a better barometer of UCR amounts than the current methodology used by group health plans and health insurance issuers.

ACEP's suggestion that the Departments mandate the use of an existing database (for example, FAIR Health) presents similar issues. As an initial matter, determining which existing database (if any) is appropriate for calculating UCR, and then monitoring the database, would be costly and time-consuming. And, as with ACEP's suggestion that the Departments create a database, there is no indication that a publicly available database would be a better barometer of UCR amounts than the current methodology used by group health plans and health insurance issuers.

Thus, the Departments concluded in the November 2015 final rule, and still maintain, that the existing GOT regulation provides a statutorily supportable, and also a more practical, and cost-effective approach for group health plans and health insurance issuers to determine the required minimum payment amounts. Further, the Departments did not have a mandate to require plans and issuers to use different databases for the purposes of implementing the Patient Protections statutory requirements from what they may currently use, and the Departments decline to mandate the use of one particular database in the limited context of this rulemaking. It is the Departments' view that it is appropriate to continue to reserve the determination of the relative merits of each database to the discretion of the states, insurers, and health plans.[21]

III. Conclusion

The Departments believe that the November 2015 final rule provides a reasonable methodology to determine appropriate payments by group health plans and health insurance issuers for out-of-network emergency services, in light of the statutory language in section 2719A of the PHS Act and the totality of the comments received in response to the June 2010 IFR. The Departments also believe that the three prongs of the GOT regulation are sufficiently transparent. ACEP's proposal that the GOT regulation require the development of a database or utilization of a publicly available database to set UCR amounts would require the Departments to extend the scope of authority provided under section 2719A of the PHS Act to

[16] *See* DOL Advisory Opinion 96–14A (July 31, 1996). *See* also FAQs about Affordable Care Act Implementation Part 31, Mental Health Parity Implementation, and Women's Health and Cancer Rights Act Implementation, available at *https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-31.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-31_Final-4-20-16.pdf*.

[17] 26 CFR 54.9815–2719(b); 29 CFR 2590.715–2719(b); 45 CFR 147.136(b). *See also* footnote 11.

[18] *See* Social Security Act Section 1848(b)(1).

[19] *See* id.

[20] *See* 29 CFR 2560.503–1(b)(4). See also 26 CFR 54.9815–2719(b)(2)(i), 29 CFR 2590.715–2719(b)(2)(i), and 45 CFR 147.136(b)(2)(i), requiring non-grandfathered group health plans and issuers to incorporate the internal claims and appeals processes set forth in 29 CFR 2560.503–1.

[21] The website of the All Claims Payable Database Council lists 19 states with legislation enabling the collection of claims and databases. *https://www.apcdcouncil.org/apcd-legislation-state*.

intrude on state authority and group health plan and health insurance issuer discretion; and even if the Departments were prepared to extend their authority in this manner, the establishment and maintenance of a database or the assessment, validation, and monitoring of a publicly available database would be costly and time-consuming. Further, there is no indication that such a database would provide a better method for determining UCR amounts than the methods group health plans and health insurance issuers currently use. The Departments therefore decline to adopt the suggestions of ACEP and other commenters that made similar suggestions regarding the GOT regulation.

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Kirsten B. Wielobob,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: April 25, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

Approved: April 25, 2018.

Signed this 25th day of April 2018.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: April 25, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 27, 2018.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2018–09369 Filed 4–30–18; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0397]

RIN 1625–AA00

Safety Zone; Straits of Mackinac, Mackinaw City, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500-yard radius of construction equipment vessels conducting operations in the Straits of Mackinac. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by surveillance and repair work to electric utility cables that cross the Straits of Mackinac. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sault Sainte Marie or a designated representative.

DATES: This rule is effective from May 3, 2018 until October 30, 2018. It will be enforced with actual notice from April 30, 2018, until May 3, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0397 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Sean V. Murphy, Sector Sault Sainte Marie Waterways Management Chief, U.S. Coast Guard; telephone 906–635–3319, email *ssmprevention@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
ROV Remotely Operated Underwater Vehicle

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because visual imagery and repair of damage to the utility cables is imperative to further mitigate any risks to the environment and the public. Emergent conditions require immediate marine surveying of the area due to damage to utility cables in the Straits of Mackinac. It is impractical to publish an NPRM because of the urgent need to survey the utility cables damaged.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to obtain visual imagery of damage to the utility cables in order to successfully effect repairs and further mitigate any risks to the environment and the public.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sault Sainte Marie (COTP) has determined that construction vessels operating in the Straits of Mackinac, will be a safety and navigation concern for any vessel within a 500-yard radius of the operations. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operations are ongoing.

IV. Discussion of the Rule

This rule establishes a safety zone from April 30, 2018 until October 30, 2018. The safety zone will cover all navigable waters within 500 yards of construction equipment vessel working and surveying damaged utility cables in the Straits of Mackinac. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while operations are ongoing. The zone will be enforced at various times throughout this period. Local Broadcast Notice to mariners, via VHF–FM marine channel 16, will notify mariners when the construction vessels are conducting operations and the zone is being enforced. No vessel or person will be permitted to enter the safety zone

without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, and location of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Straits of Mackinac during a time of year when vessel traffic is normally low. 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 rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 500 yards of construction equipment vessels in the Straits of Mackinac surveying and conducting repairs to damaged utility cables. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T09–0397 to read as follows:

§ 165.T09–0397 Safety Zone; Straits of Mackinac, Mackinaw City, MI.

(a) *Location.* The following area is a safety zone: All navigable waters of the Straits of Mackinac, from surface to bottom, within a 500 yard radius around construction equipment vessels.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard petty officer, warrant officer, or commissioned officer and any Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF radio channel 16 or call 906–635–3319. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section is effective from April 30, 2018, until October 30, 2018. It will be enforced while construction vessels operate within the designated location in paragraph (a) of this section. Local Broadcast Notice to mariners via VHF–FM marine channel 16 will notify mariners when vessels are conducting operations.

Dated: April 30, 2018.

Marko R. Broz,

Captain, U.S. Coast Guard, Captain of the Port, Sector Sault Sainte Marie.

[FR Doc. 2018–09407 Filed 5–2–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0851; FRL–9977–02—Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Interstate Transport Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of Louisiana's State Implementation Plan (SIP) submittal and a technical supplement, that address a CAA requirement that SIPs account for potential interstate transport of air pollution that significantly contributes to nonattainment or interferes with maintenance of the 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) in other states. EPA finds that emissions from Louisiana sources do not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 2012 $PM_{2.5}$ NAAQS.

DATES: This rule is effective on June 4, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2015–0851. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, 214–665–6454, *fuerst.sherry@epa.gov*.

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

I. Background

The background for this action is discussed in detail in our February 1, 2018 proposal (83 FR 4617). In that document we proposed to approve portions of Louisiana's State Implementation Plan (SIP) submittal and a technical supplement, that address a CAA requirement that SIPs account for potential interstate transport of air pollution that significantly contributes to nonattainment or interferes with maintenance of the 2012 $PM_{2.5}$ NAAQS in other states. We proposed to determine that emissions from Louisiana sources do not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 2012 $PM_{2.5}$ NAAQS.

On March 6, 2018, we received six anonymous public comments on the proposed rulemaking action. The comments are posted to the docket (EPA–R06–OAR–2015–0851). Several of the commenters provided the air quality index for March 2, 2018 for various locations across the USA and compared them to various locations across Asia. Other commenters discussed the shortcomings of the tariffs and conflict minerals law. Such comments are not relevant to the Clean Air requirements being addressed here and are outside the scope of this specific rule making action.

II. Final Action

We are approving the portions of the December 11, 2015 Louisiana SIP revision pertaining to emissions that significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in other states and the supplemental information provided to us on July 7, 2017. We find that emissions from Louisiana sources do not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 2012 $PM_{2.5}$ NAAQS.

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2018. 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, Particulate matter.

Dated: April 25, 2018.

Anne Idsal,

Regional Administrator, Region 6.

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 E—Louisiana

■ 2. In § 52.970, in paragraph (e), the second table titled ''EPA Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures'' is amended by adding an entry at the end for ''Interstate transport for the 2012 $PM_{2.5}$ NAAQS (contribute to nonattainment or interfere with maintenance)'' to read as follows:

§ 52.970 Identification of plan

* * * * *

(e) * * *

EPA-Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* *	*	*	*	* *
Interstate transport for the 2012 $PM_{2.5}$ NAAQS (contribute to nonattainment or interfere with maintenance).	Statewide	12/11/2015 7/7/2017	5/3/2018, [Insert **Federal Register** citation].	Adequate provisions prohibiting emissions which will contribute significantly to nonattainment in, or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other State.

[FR Doc. 2018–09314 Filed 5–2–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 431

[CMS–6068–F2]

RIN 0938–AS74

Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correcting amendment.

SUMMARY: This document corrects a technical error that appeared in the final rule published in the **Federal Register** on July 5, 2017 entitled ''Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act'' (hereinafter referred to as the ''PERM final rule'').

DATES: This correction is effective May 3, 2018.

FOR FURTHER INFORMATION CONTACT: Bridgett Rider, (410) 786–2602.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2017–13710 (82 FR 31158), there was a technical error that is identified and corrected in this correcting document. The provision in this correction document is effective as if it had been included in the document published in the **Federal Register** on July 5, 2017. Accordingly, the corrections are applicable beginning August 4, 2017.

II. Summary of Error in Regulation Text

In the regulation text, we inadvertently omitted the removal of § 431.802, which we discussed on page 31161 of the final rule.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. The document corrects technical errors in the PERM final rule, but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the PERM final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate information in as timely a manner as possible, and to ensure that the PERM final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not making substantive changes to our policies, but rather, we are simply implementing correctly the policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the PERM final rule accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

List of Subjects in 42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendment:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

§ 431.802 [Removed]

■ 2. Section 431.802 is removed.

Dated: April 26, 2018.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2018–09347 Filed 5–2–18; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 17–79; FCC 18–30]

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document (Order), the Federal Communications Commission (The Commission or FCC) adopts rules to streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities. As part of the FCC's efforts, the agency consulted with a wide range of communities to determine the appropriate steps needed to enable the rapid and efficient deployment of next-generation wireless networks—or 5G—throughout the United States. The Order focuses on ensuring the Commission's rules properly address the differences between large and small wireless facilities, and clarifies the treatment of small cell deployments. Specifically, the Order: Excludes small wireless facilities deployed on non-Tribal lands from National Historic Preservation Act

(NHPA) and National Environmental Policy Act (NEPA) review, concluding that these facilities are not ''undertakings'' or ''major Federal actions.'' Small wireless facilities deployments continue to be subject to currently applicable state and local government approval requirements. The Order also clarifies and makes improvements to the process for Tribal participation in section 106 historic preservation reviews for large wireless facilities where NHPA/NEPA review is still required; removes the requirement that applicants file Environmental Assessments solely due to the location of a proposed facility in a floodplain, as long as certain conditions are met; and establishes timeframes for the Commission to act on Environmental Assessments. These actions will reduce regulatory impediments to deploying small cells needed for 5G and help to expand the reach of 5G for faster, more reliable wireless service and other advanced wireless technologies to more Americans.

DATES: Effective July 2, 2018.

FOR FURTHER INFORMATION CONTACT: Aaron Goldschmidt, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, (202) 418–7146, email *Aaron.Goldschmidt@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (R&O), WT Docket No. 17–79 adopted March 22, 2018 and released March 30, 2018. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW, Room CY–B402, Washington, DC 20554; the contractor's website, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com*. Copies of the R&O also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 17–79. Additionally, the complete item is available on the Federal Communications Commission's website at *http://www.fcc.gov*.

I. Excluding Small Wireless Facilities From NHPA and NEPA Review

1. In this Order, the FCC makes a threshold legal determination, and amends § 1.1312 of its rules to clarify, that the deployment of small wireless facilities by non-Federal entities is neither an ''undertaking'' within the meaning of the National Historic Preservation Act (NHPA) nor a ''major Federal action'' under the National Environmental Protection Act (NEPA). Although the FCC clarifies in the Order that the deployment of small wireless facilities on non-Tribal lands therefore will not be subject to certain Federal historic preservation and environmental review obligations, the FCC leaves undisturbed its existing requirement that the construction and deployment of larger wireless facilities, including those deployments that are regulated in accordance with the FCC's antenna structure registration (ASR) system or subject to site-by-site licensing, must continue to comply with those environmental and historic preservation review obligations.

2. Section 106 of the NHPA mandates historic preservation review for ''undertakings,'' while NEPA mandates environmental review for ''major Federal actions.'' Courts have treated these two categories as largely coextensive, and have recognized that the question of what constitutes an ''undertaking'' or a ''major Federal action'' is an objective inquiry that focuses on the degree of Federal control over a particular deployment. The FCC has previously determined, and the DC Circuit has affirmed, that wireless facility deployments associated with geographic area licenses may constitute ''undertakings'' in two limited contexts: (1) Where facilities are subject to the FCC's tower registration and approval process pursuant to section 303(q) of the Communications Act because they are over 200 feet or are near airports, and (2) where facilities not otherwise subject to pre-construction authorization are subject to § 1.1312(b) of the FCC's rules and thus must obtain FCC approval of an environmental assessment prior to construction. The FCC has referred to the rule governing this latter category of deployments as the its retention of a ''limited approval authority.'' While the DC Circuit held that the FCC acted within its discretion in classifying these two categories of actions as Federal undertakings, it noted that the FCC had not engaged in extended analysis of the issue and did not foreclose the FCC from revisiting the scope of these categories at a later time.

3. The FCC clarifies, through amendment of its rules, that the deployment of small wireless facilities by non-Federal entities does not constitute an ''undertaking'' or ''major Federal action,'' and thus does not require Federal historic preservation or environmental review under the NHPA or NEPA. Small wireless facilities that meet its definition here are not subject to ASR requirements under section 303(q) of the Act. Accordingly, the only remaining basis on which they could be considered an ''undertaking'' or ''major Federal action'' is if they are subject to the ''limited approval authority'' under § 1.1312(b) of the FCC's rules. Through this Order, the FCC clarifies that deployments of small wireless facilities do not fall within the scope of § 1.1312(b). Having made that threshold determination, there is no longer any cognizable Federal control over such deployments for purposes of the NHPA or NEPA, and hence, those deployments are neither ''undertakings'' nor ''major Federal actions'' subject to those Federal historic preservation or environmental review obligations.

4. The FCC bases this public interest analysis on a variety of considerations. Removing § 1.1312(b)'s trigger of environmental and historic preservation review for small wireless facilities will help further Congress's and the FCC's goals of facilitating the deployment of advanced wireless services (such as 5G) and removing regulatory burdens that unnecessarily raise the cost and slow the deployment of the modern infrastructure used for those services. To be able to meet current and future needs, including deployment of advanced 4G and 5G networks, providers will need to deploy tens of thousands of small wireless facilities across the country over the coming years. It would be impractical and extremely costly to subject each individual small facility deployment to the same requirements that the Commission imposes on macro towers. A report prepared by Accenture Strategy for CTIA found that 29 percent of wireless deployment costs are related to NHPA/NEPA regulations when reviews are required. There is also no legitimate reason why next-generation technology should be subjected to many times the regulatory burdens of its 3G and 4G predecessors.

5. This decision is consistent with the history of § 1.1312. When the FCC adopted that section, its focus was primarily on the deployment of macrocells and the relatively large towers that marked the deployment of prior generations of wireless service for which site-specific preconstruction review was common even in the absence of a Section 319 construction permit. Those macrocells and large towers supported legacy technology and because of their size were more likely to have an appreciable environmental impact. The world of small wireless facility deployment is materially different from the deployment of

macrocells in terms of the size of the facility, the importance of densification, and the lower likelihood of impact on surrounding areas. The Commission simply could not have anticipated that advanced wireless services would require the densification of small deployments over large geographic areas that leave little to no environmental footprint. Amending § 1.1312 to make clear that it does not apply to small wireless facility deployment accounts for this reality.

6. This decision is consistent with the FCC's treatment of small wireless facility deployments in other contexts. For example, under the Collocation Nationwide Programmatic Agreement (NPA), it already excludes many facilities that meet size limits similar to those defined below from historic preservation review. This decision builds upon the insight underlying these existing rules that small wireless facilities pose little or no risk of adverse environmental or historic preservation effects.

7. Under existing practice, the FCC currently does not subject many types of wireless facilities to environmental and historic preservation compliance procedures. For example, the FCC has not applied these review requirements to consumer signal boosters, Wi-Fi routers, and unlicensed equipment used by wireless internet service providers. Thus, the FCC has already, in effect, made a public interest determination that, even if it had the legal authority to do so, the cost of requiring NEPA and NHPA compliance for certain types of facilities outweighs the benefits. This action simply applies that existing paradigm to current circumstances.

8. Fifth, while its amendment of § 1.1312 to exclude small wireless facility deployments eliminates the only basis under *CTIA* and Commission precedent for treating such deployments as undertakings or major Federal actions subject to NHPA and NEPA review, the FCC concludes that the costs of conducting such review in the context of small wireless facilities outweigh any attendant benefits. The record in this proceeding demonstrates significant burdens on small facility deployment emanating from these requirements. The FCC expects these burdens to grow exponentially, as an ever-increasing number of small wireless facilities are deployed. The FCC also finds little environmental and historic preservation benefit associated with requiring environmental or historic preservation assessments for small wireless facility deployment. While ''wireless providers will need flexibility to strategically place thousands of [distributed antenna system] and small cell facilities throughout the country in the next few years,'' Commission requirements to conduct environmental and historic preservation review pose significant obstacles to that deployment. The FCC concludes that any marginal benefit that NHPA and NEPA review might provide in this context would be outweighed by the benefits of more efficient deployment of small wireless facilities and the countervailing costs associated with such review. Accordingly, the public interest is not served by requiring small wireless facilities to continue to adhere to this costly review process.

9. This decision is limited to small wireless facilities that are deployed to provide service under geographic area licenses and are not subject to ASR. Thus, the FCC does not address whether, or the extent to which, site-by-site licensing or ASR render construction of the licensed or registered facilities a major Federal action or undertaking. The FCC also does not revisit the Commission's previous analyses as applied to facilities falling outside the scope of small wireless facilities covered by this Order. To the extent the *Wireless Infrastructure NPRM* (82 FR 21761 (May 10, 2017)) sought comment on these questions, they remain pending and may be considered in future items. In addition, transmissions from all facilities that operate pursuant to geographic area licenses remain subject to its rules governing radio frequency (RF) emissions exposure.

A. Statutory Background and Commission Precedent

10. Section 106 of the NHPA requires Federal agencies to ''take into account'' the effects of their ''federal or federally assisted undertaking[s]'' on historic properties. An undertaking is defined by the statute as ''a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval[.]'' Court precedent and Advisory Council on Historic Preservation (ACHP) guidance make clear that there must be some degree of Federal involvement for something to constitute an ''undertaking'' under the NHPA. By rule and the Commission's *2004 Order* (70 FR 556 (Jan. 4, 2005)), the FCC has authority to determine what activities constitute Federal undertakings.

11. NEPA requires Federal agencies to identify and evaluate the environmental effects of proposed ''major Federal actions.'' Similar to an ''undertaking,'' a ''major Federal action'' under NEPA includes, among other things, ''projects and programs entirely or partly . . . approved by federal agencies.'' Courts consider ''major Federal actions'' under NEPA to be largely equivalent to ''undertakings'' under the NHPA. Accordingly, like the NHPA's requirements, ''[t]he requirements of NEPA apply only when the federal government's involvement in a project is sufficient to constitute 'major federal action.' ''

12. As relevant here, the Commission has historically identified undertakings and major Federal actions, and thus imposed corresponding NHPA and NEPA obligations, based on the Commission's activities in two areas: ASR and facilities subject to the approval requirement in § 1.1312 of its rules. Specifically, the Commission has required environmental and historic preservation review via two regulatory approval processes. The first applies only to the subset of towers that exceed 200 feet or are in the vicinity of an airport and thus are required to ''be 'registered' '' with the Commission pursuant to section 303(q) of the Communications Act. The second applies where facilities that are not otherwise subject to pre-construction Commission authorization are nonetheless required to obtain Commission approval of an environmental assessment prior to construction pursuant to § 1.1312(b) of the Commission's rules. The Commission has treated its approvals in each of these contexts as rising to the level of ''undertakings'' or ''major Federal actions'' that trigger NHPA and NEPA. And the Commission's approach has been affirmed by the U.S. Court of Appeals for the DC Circuit, which held that the Commission acted within its discretion in identifying its pre-construction antenna structure registration requirements under section 303(q) of the Act and its § 1.1312 limited-approval authority as undertakings for purposes of NHPA.

13. The history of the FCC's involvement in this area begins in 1974, when it first promulgated rules implementing NEPA. At that time, FCC licenses provided carriers with authority to operate from a specific site or physical location, and Federal law generally required the FCC to issue the provider a construction permit for that site before the agency granted a license to operate. The Commission thus had a significant, Federal role in approving construction of specific wireless communications facilities in a given location, and it treated these activities as undertakings under the NHPA and major Federal actions under NEPA.

14. In 1982, Congress altered this framework. In particular, it eliminated the construction permit requirement for certain wireless licenses, while permitting the Commission to retain the requirement if it determined that the ''public interest, convenience, and necessity'' required it. As a result of this and associated regulatory changes, the FCC now licenses many services, including most licensees operating in commercial wireless services, to transmit over a particular band of spectrum within a wide geographic area without further limitation as to transmitter locations.

15. Nonetheless, the FCC has continued by rule to require certain wireless providers previously subject to construction permit requirements to comply with environmental and historic preservation review procedures without regard to the particular type of deployment at issue. In 1990, the Commission amended § 1.1312 of its rules, so that that where construction of a Commission-regulated radio communications facility is permitted without prior Commission authorization (*i.e.,* without a construction permit), the licensee must nonetheless comply with historic preservation and environmental review procedures. As the DC Circuit observed, the Commission's 1990 decision ''never explicitly addresse[d] whether tower construction is a Federal undertaking under section 106 of the NHPA.'' Nor did it expressly address whether such construction was a major Federal action under NEPA. Instead, the Commission's adoption of § 1.1312 was grounded in the '' 'public interest benefits of ensuring, in compliance with Federal environmental statutes, that no potentially irreversible harm to the environment occurs.' '' The Commission apparently concluded that this public interest consideration sufficed for the agency to use the § 1.1312 process to trigger NEPA and NHPA review.

16. In 1995, the Commission expressly concluded that ''registering a structure,'' that is, its tower registration process, ''constitutes a 'federal action' or 'federal undertaking' '' under the relevant Federal environmental and historic preservation review statutes. However, as the DC Circuit observed, that 1995 decision ''contains no analysis of relevant statutes and regulations in support of that conclusion.''

17. In 2004, the Commission addressed the NHPA again in the context of establishing a programmatic agreement. In that decision, the Commission offered two bases for determining that the construction of communications towers and deployment of antennas require compliance with NHPA. First, the Commission relied on the agency's tower registration process and authority. It indicated that this process ''may be viewed as effectively constituting an approval process within the Commission's section 303(q) authority.'' Under section 303(q), the Commission has chosen to implement rules requiring that towers meeting certain height and location criteria be registered with the Commission prior to construction. Second, as described above, the Commission relied on what it has described as a ''limited approval authority.'' Specifically, while section 319(d) states that a construction permit shall not be required for the deployment of certain facilities, the Commission read what it described as ''section 319(d)'s public interest standard'' as allowing the Commission to require covered entities to nonetheless comply with environmental and historic preservation processing requirements. The Commission pointed in particular to § 1.1312 of the its rules, which states that ''[i]f a facility'' for which no Commission authorization prior to construction is required ''may have a significant environmental impact'' then the licensee must submit an environmental assessment to the Commission and the Commission must then rule on that assessment prior to initiation of construction of the facility.

18. At the same time, the Commission stated that the agency ''did not seek comment on the question whether the Commission should, assuming that it possesses statutory authority to do so, continue its current treatment of tower construction as an 'undertaking' for purposes of the NHPA.'' Therefore, the Commission ''decline[d] to revisit'' that question. Continuing, the Commission observed that ''[u]nless and until we undertake the reexamination and determine that it is appropriate to amend its rules . . . we believe its existing policies treating tower construction as an undertaking under the NHPA reflect a permissible interpretation of the Commission's authority under section 319(d) of the Act to issue construction permits for radio towers, as well as its authority under section 303(q) governing painting and/or illumination of towers for purposes of air navigation safety.''

19. Two Commissioners dissented in part from the agency's 2004 decision, expressing the view that, in the absence of a construction permit or a site-by-site license, the Commission's retention of jurisdiction to require historic preservation review exceeded its statutory authority. On appeal, the U.S. Court of Appeals for the DC Circuit upheld the Commission's decision against a challenge that it was arbitrary and capricious.

20. Most recently, in 2014, the FCC found ''no basis to hold categorically that small wireless facilities such as DAS and small cells are not Commission undertakings.'' But the Commission there was only evaluating the operation of the rule, by its terms, against the backdrop of the specific evidence in the record on that item. The Commission did not consider whether, in the first instance, it could amend its rules to clarify that small wireless facilities are not Commission undertakings or whether the public interest would be served by doing so.

21. In the *Wireless Infrastructure NPRM,* the Commission sought comment on updating its approach to environmental and historic preservation review. Among other things, the Commission ''invite[d] comment on whether we should revisit the Commission's interpretation of the scope of its responsibility to review the effects of wireless facility construction under the NHPA and NEPA.'' The *NPRM* invited input on ''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,'' seeking particular comment regarding the treatment of geographic area service license and small wireless facility deployment.

B. Legal Analysis

1. By Amending Its Rules, the FCC Clarifies That Small Wireless Facility Deployment Is Neither an Undertaking Nor a Major Federal Action

22. Consistent with the DC Circuit's decision in *CTIA,* the FCC exercises its discretion to amend its rules to clarify that the deployment of small wireless facilities does not qualify as a Federal undertaking or major Federal action. As explained above, a Federal undertaking or major Federal action requires a sufficient degree of Federal involvement, and the Commission has only ever identified two potential bases by which such involvement exists with respect to the deployment of wireless facilities that do not require site-by-site licensing or construction permits. The first is the ASR obligations that flow from section 303(q) and apply to facilities that are over 200 feet in height or are close to airports. The second is

the ''limited approval authority'' that is codified in § 1.1312 of the Commission's rules. Since the deployment of small wireless facilities, as defined herein, is not subject to antenna structure registration requirements under section 303(q) of the Act, that avenue cannot provide a basis for treating small wireless facilities as an undertaking. Thus, the only possible basis by which small wireless facility deployments could be Federal undertakings would be if they were subject to the Commission's ''limited approval authority.''

23. In this Order, the FCC amends its rules to remove small wireless facilities deployment from § 1.1312 of the rules, eliminating the remaining basis for treating small wireless facility deployment as an undertaking and major Federal action. Neither the DC Circuit's *CTIA* decision nor Commission precedent precludes us from amending that rule, as long as its amendments are otherwise consistent with the Communications Act. As explained below, the Commission has multiple sound reasons for making this amendment, including that limiting § 1.1312 to larger wireless facilities is more consistent with the original purpose of the rule and Commission practice with respect to other small deployments. By clarifying that § 1.1312 does not apply to small wireless facility deployment, the FCC eliminates the predicate Federal involvement required for undertakings and major Federal actions. Accordingly, such deployments are no longer subject to those historic preservation and environmental review obligations.

2. Its Amendment of Section 1.1312 of the Rules Is Consistent With the Public Interest

24. The FCC concludes that its actions are consistent with the Commission's statutory mandates under the Communications Act, including its mandate to regulate in the public interest.

25. Although the Commission appeared to ground the adoption of § 1.1312 in its public interest authority, the Commission has never squarely addressed whether the public interest is served by exercising this authority in the context of small wireless facility deployment. Nor did the Commission have at its disposal in 1990 the wealth of evidence now available in the wake of small cell deployment replacing macro deployment as the means by which many providers are choosing to deploy new wireless technology, such as 5G. In amending the Commission's rules, and after review of the record, the FCC determines that the public interest would not be served by continuing to subject small wireless facility deployment to § 1.1312's review requirements. As part of the public interest analysis, the FCC recognizes that the approval requirement in § 1.1312 has the effect of subjecting covered deployments to environmental and historic preservation review under NEPA and the NHPA. The FCC deems the costs of that resulting review to be unduly burdensome in light of the nature of small wireless facility deployment, the benefits of efficient and effective deployment, and the minimal anticipated benefits of NHPA and NEPA review in this context, as explained in greater detail below.

26. When exercising its public interest authority to effectuate the purposes of the Communications Act, the FCC must factor in the fundamental objectives of the Act, including the deployment of a ''rapid, efficient . . . wire and radio communication service with adequate facilities at reasonable charges'' and ''the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays[, and] efficient and intensive use of the electromagnetic spectrum.'' Relatedly, section 706 of the 1996 Act exhorts the Commission to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity. . . . regulating methods that remove barriers to infrastructure investment.'' These statutory provisions do not confer authority but are consistent with the goals of the Communications Act.

27. Furthermore, a close analysis of section 319(d) of the Act supports the conclusion that Congress does not want the Commission to place unnecessary regulatory barriers in the way of wireless facilities deployment. section 319(d) states, in relevant part, that ''[a] permit for construction shall not be required for . . . stations licensed to common carriers, unless the Commission determines that the public interest, convenience and necessity would be served by requiring such permits for any such stations.'' By its terms, section 319(d) eliminates Commission approval requirements for wireless communications facilities and precludes construction permits for those classes of providers unless the FCC makes affirmative public interest findings that such requirements are necessary and expressly imposes them. That language in section 319(d) was added in 1982 based on Congress's belief that in many cases the required preapproval ''may delay market entry and place an unnecessary administrative and financial burden on both the potential licensee and the Commission.'' It appears contrary to the intent of section 319(d) to replace the eliminated construction permit requirement with a different approval process that, at least in the small wireless facility context, risks replicating the harmful effects that Congress expressly sought to eliminate absent strong evidence of the public interest benefits of doing so.

28. The FCC finds on the record in this proceeding that the public interest does not support applying the § 1.1312 approval process to small wireless facilities. To the contrary, encouraging small wireless facility deployment directly advances all of the statutory objectives described above. The FCC has recognized that small wireless facilities will be increasingly necessary to support the rollout of next-generation services, with far more of them needed to accomplish the network densification that providers require, both to satisfy the exploding consumer demand for wireless data for existing services and to implement advanced technologies like 5G. The record here also supports its prior conclusions regarding the volume and pace of needed small wireless facility deployments to support the future of advanced wireless services. The FCC notes, for example, that Verizon anticipates that 5G networks will require 10 to 100 times more antenna locations than previous technologies, while AT&T estimates that carriers will deploy hundreds of thousands of wireless facilities—equal to or more than they have deployed over the last few decades. Sprint, in turn, has announced plans to build at least 40,000 new small sites over the next few years.

29. In light of these statistics, the Commission cannot simply turn a blind eye to the reality that the mechanical application of § 1.1312's requirements to each of these small deployments would increase the burden of review both to regulated entities and the Commission by multiples of tens or hundreds. Nor can the FCC ignore the record evidence cited above showing the negative impact and high costs associated with subjecting small wireless facility deployments to NHPA and NEPA review. It would be impractical, extremely costly, and contrary to the purposes of the Communications Act to subject the deployments required for 5G technology to many times the regulatory burdens that the Commission previously imposed on 3G and 4G infrastructure.

30. The historical and present application of § 1.1312 supports the distinction the FCC makes between macrocell and large towers on the one hand and small wireless facilities on the other. When the Commission amended § 1.1312 in 1990 to require historic preservation and environmental review procedures for radio communications facilities that did not require pre-authorization permits, it was primarily focused on macrocells and large tower deployments, and it could not have anticipated that many small-cell antennas today would fit inside a space the size of a pizza box or that densification of many hundreds of these antennas would be necessary for deployment of more advanced wireless technologies. The Commission has nevertheless made common-sense accommodations for types of deployments that have limited potential for environmental and historic preservation effects and for which compliance would be impractical. For example, the Commission does not subject consumer signal boosters, Wi-Fi routers, or unlicensed equipment used by wireless internet service providers to § 1.1312 review. Through this Order, the FCC applies similar considerations in determining that it is consistent with the public interest to eliminate NEPA and NHPA compliance requirements for all small wireless facility deployments as defined herein.

31. The FCC further finds, on balance, that the costs of requiring § 1.1312 review for small wireless facilities outweigh the marginal benefits, if any, of environmental and historic preservation review.

32. Although commenters assess the magnitude of time and resources required for NEPA and NHPA compliance differently, the record clearly indicates that there are substantial, rising, and unnecessary costs for deployment that stem from compliance with NEPA and the NHPA. Over the last several decades, for example, Sprint estimates that it has done preliminary NEPA checklists for thousands of sites at a cost of tens of millions of dollars. Of those sites, approximately 250 triggered the requirement that Sprint prepare an environmental assessment that costs approximately $1,300. Most of those environmental assessments were for historic preservation concerns by state historic preservation officers under § 1.1307(a)(4) of the Commission's rules because the site was in or near a Historic District or Historic Property, but every one of those assessments resulted in a finding of no significant impact. In other words, the Commission's rules have required Sprint to spend tens of millions of dollars to investigate a minimal likelihood of harm.

33. Verizon and AT&T reported similar burdens. Verizon examined its small wireless facility deployments in 2017 in five urban markets across the United States and found that completing NEPA and NHPA reviews comprised, on average, 26 percent of the total cost for these deployments. In the five markets Verizon examined, the costs of completing NEPA and NHPA (including Tribal) reviews comprised, on average, 26 percent of the total cost of deployment of small cells, including equipment. AT&T offered similar figures, stating that 17 percent of its costs to deploy each small wireless facility is directed to NEPA and NHPA compliance. AT&T further represented that it expects to spend $45 million on NEPA and NHPA compliance for thousands of small wireless facilities in 2018 and that its current NEPA and NHPA costs have direct effects on its broadband deployment initiatives by funneling money away from new small wireless facility projects or the expansion of existing projects. By contrast, AT&T estimates that a Commission decision that such deployments are not major Federal actions or undertakings would reduce small cell NEPA/NHPA compliance costs by up to 80 percent, which would fund over 1,000 additional small cell nodes annually, and reduce the small cell deployment timeline by 60–90 days. CTIA submitted a report indicating that overall, in 2017, providers spent nearly $36 million on NEPA and NHPA compliance. The report estimated that, based on providers' plans to accelerate small facility deployment, NEPA and NHPA costs would increase to $241 million in 2018.

34. The record also reveals more generally that, even setting aside payments to Tribal Nations, which the FCC addresses below, review requirements can easily cost well over a thousand dollars per review—and potentially much more. Even if the time and resource expenditure associated with this review process may not appear substantial in the context of a single facility's deployment, given its prior conclusions based on the record regarding the volume and pace of needed small wireless facility deployments, the FCC expects the aggregate effect of exercising its limited reservation of authority to require environmental and historic preservation review for small wireless facilities to be substantially greater. For example, the FCC estimates that in the last several years thousands of small wireless facility deployments annually have been subject to Tribal review under its rules, representing approximately 80 percent of the total of such reviews. Given trends in small wireless facility deployment, the number of such reviews is likely to increase further over time. In addition, although aggregate annual review costs for smaller providers might well be less than that of entities with a large number of annual deployments, such small businesses also are likely less able to bear those costs. Although batch processing can have some benefits in reducing the burdens of review, even advocates of batchings observe that its benefits may be limited based on characteristics such as batch size, specific type of facility, environmental and/or historic preservation effect, and geographic area. The FCC thus is not persuaded that batch processing will reduce the burdens of the review process to such a degree that those burdens no longer would be significant.

35. The potential delay in deployment associated with the review process also appears likely to be substantial. The record reveals that, given their time and expense, environmental and historic preservation review processes ''are generally not started until the municipality has provided its approvals in case the municipality does not approve the initial location.'' Thus, environmental and historic preservation review requirements necessarily impose delays above and beyond the time when facilities otherwise could begin deployment. Although the Commission takes steps to reduce such process delays, even delays of 30 days (let alone more) are substantial enough to weigh in its public interest calculus, particularly when aggregated across all the small wireless facility deployments that will be required in the coming years.

36. At the same time, the record does not support sufficiently appreciable countervailing environmental and historic preservation benefits associated with subjecting small wireless facility deployments off of Tribal lands to historic preservation and environmental reviews. Consistent with its precedent, the FCC considers the possible benefits to the environment and historic preservation flowing from a Commission-imposed compliance requirement for small wireless facility deployments. The FCC concludes on the record here, however, that the specific, limited types of small wireless facility deployments described below do not warrant the imposition of these requirements off of Tribal lands. On

Tribal lands, the FCC leaves undisturbed the historic preservation and environmental review processes that the FCC presently has in place for deployments of wireless facilities. Based on its review of the record, including concerns raised by Tribal Nations regarding the unique nature of Tribal land and the Commission's ongoing recognition of Tribal sovereignty, the FCC clarifies that it continues to exercise its limited approval authority for the deployment of small wireless facilities on Tribal land is consistent with our focus in the *Wireless Infrastructure NPRM* on areas of Tribal interest, and supported by our review of the record, which establishes that wireless providers have not experienced the same challenges arising from the historic preservation review process on Tribal lands.[1] The Commission's public interest determination is also rooted in our ongoing commitment to fulfilling principles of Tribal sovereignty and to our Federal trust responsibility.

37. As an initial matter, the FCC defines the types of facilities excluded from the scope of § 1.1312 in such a way as to minimize the impact that these facilities, as a class, could have on the environment and historic properties. The FCC also adopts a definition that ensures that larger facilities continue to be subject to its NHPA and NEPA processes. The FCC believes that this represents a better allocation of scarce resources. The FCC thus excludes from its review requirement only facilities that are limited in antenna volume, associated equipment volume, and height.

38. As to height, its revised rule excludes small wireless facilities if they are deployed on new structures that are either no taller than the greater of 50 feet (including their antennas) or no more than 10 percent taller than other structures in the area. The rule also excludes any small wireless facility that is affixed to an existing structure, where as a result of the deployment that structure is not extended to a height of more than 50 feet or by more than 10 percent, whichever is greater. The Commission has previously used similar size specifications to delineate circumstances in which environmental and historic preservation review was unwarranted. In particular, the Commission has excluded from review those pole replacements that, among other things, ''are no more than 10 percent or five feet taller than the original pole, whichever is greater'' to guard against the risk of ''excluding replacement poles that are substantially larger than or that differ in other material ways from the poles being replaced might compromise the integrity of historic properties and districts.'' The Commission's exclusion for pole replacements was further limited in a manner designed to ensure ''that the replacement will not substantially alter the setting of any historic properties that may be nearby.'' The FCC seeks to advance similar ends here through the limits on overall size relative to other structures in the area. As AT&T observes, for example, ''the vast majority of small cell antennas are placed at a height of less than 60 feet on structures located near similarly sized structures in previously disturbed rights-of-way, greatly reducing the likelihood of adversely impacting the surrounding environment.'' The 50-foot height threshold the FCC adopts falls within the 60-foot parameter cited by AT&T and others, but the FCC also allows higher deployment in cases where such deployment is only a modest (10 percent) departure from the height of the preexisting facility or surrounding structures.

39. Its public interest finding here also applies only when certain volumetric limits are met. To qualify as a small wireless facility, the antenna associated with the deployment, excluding the associated equipment, must be no more than three cubic feet in volume. The FCC agrees with commenters that, at this size, small wireless facilities ''are unobtrusive and in harmony with the poles, street furniture, and other structures on which they are typically deployed.'' This size is analogous to that of facilities the Commission previously has excluded from review under the Collocation NPA. The Commission has found in other contexts that the size of those facilities fully eliminated the possibility of what already was only a remote potential for historic preservation effects. This size also is similar to—or smaller than—the antenna volume specified in definitions of small wireless facilities under a number of state laws seeking to facilitate small wireless facility deployment. The FCC agrees with Verizon that at ''three cubic feet or less per antenna'' small wireless facilities ''bear little resemblance to the macro facilities that represented most wireless siting'' when the Commission conducted its public interest evaluations in the past.

40. Additionally, the wireless equipment associated with the antenna must be no larger than 28 cubic feet. The FCC derives this limit from analogous limits on associated equipment in the Collocation NPA and the small wireless facility definitions in many state laws. The record persuades us that this definition appropriately balances its policy goal of promoting advanced wireless service and its recognition of the importance of environmental and historic preservation concerns where they might meaningfully be implicated. In particular, the FCC agrees with commenters that urge us to build on the small wireless facility definitions in the Collocation NPA and state laws, ''while retaining flexibility to account for changes in technologies.''Advanced wireless services are migrating from 4G to 5G, and the FCC wants to foster that migration. As T-Mobile observes, ''5G systems are still in the early stages of development,'' and ''any small wireless facility definition should accommodate this new, critical phase of broadband deployment.'' Commenters identify 28 cubic feet as a workable definition for associated equipment, which will help encourage small wireless facility deployment to a greater extent than relying on some prior, smaller definitions of associated equipment size that would provide more limited relief. At the same time, just as the Collocation NPA and state laws commonly have adopted a numerical limit on associated equipment, the FCC finds a numerical limit warranted here, consistent with its goal of defining these facilities in a way that constrains the potential for environmental and historic preservation effects. The FCC is not persuaded that limits larger than 28 cubic feet—or forgoing any numeric limit on associated equipment at all—would balance that interest as effectively. The FCC also notes, as a practical matter, the general trend toward increasingly smaller equipment deployments, which will make it less likely that associated equipment will need to exceed the 28 cubic feet limit, and also less likely that deployment of associated equipment will have environmental or historic preservation effects.

41. The FCC is not persuaded to further restrict the definition of small wireless facility by placing an aggregation limit on the number of such facilities on a given structure or pole, as some propose. The FCC is skeptical that even in scenarios involving multiple small wireless facilities deployed on a single structure or pole, the resulting aggregate deployment would resemble

[1] *See, e.g.,* CTIA/WIA Comments at 7–8 (distinguishing between projects proposed on Tribal lands versus those proposed on non-Tribal lands and addressing its comments to the latter); Verizon Comments at 44 n. 142 (emphasizing that Verizon was not proposing changes to the process for reviewing facilities to be constructed on Tribal lands).

macrocells or towers of the sort the Commission generally envisioned in its past public interest analysis. Indeed, there are practical limitations on how many small wireless facilities can fit on a single pole. However, even if there are deployments where two or more small cells have a larger antenna volume in the aggregate than a single macrocell deployment, the FCC still finds its approach reasonable given the economic, technical, and public interest benefits of promoting small wireless facility deployments discussed above. Finally, nothing the FCC does in this order precludes any review conducted by other authorities—such as state and local authorities—insofar as they have review processes encompassing small wireless facility deployments. The existence of state and local review procedures, adopted and implemented by regulators with more intimate knowledge of local geography and history, reduces the likelihood that small wireless facilities will be deployed in ways that will have adverse environmental and historical preservation effects.

42. While a number of commenters argue that review confers environmental and historic preservation benefits, to the extent they provide factual support, they provide no more than generalized claims of effects of small wireless facility deployment that have been addressed in isolated cases. While other commenters identify specific factual scenarios of concern to them regarding small wireless facility deployment, there is substantial record evidence that actual instances of concern identified by review are few.

43. For example, Crown Castle states that it has never received a report or a negative response from a Tribal Nation regarding a proposed small cell deployment. Other commenters echo this experience. Sprint, for instance, remarks that in the thousands of tower and antenna projects it has undertaken since 2004, which included numerous small cell deployments, it has never had a substantive consultation with Tribal Nations that revealed possible adverse impacts on historic properties. Verizon, likewise, represents that between 2012 and 2015, only 0.3% of Verizon's requests for Tribal review resulted in findings of an adverse effect to Tribal historic properties, while AAR states that ''more than 99.6 percent of deployments pose no risk to historic, tribal, and environmental interests.'' Based on these apparently minimal effects of small wireless facility deployment on environmental and historic preservation interests, the FCC believes that the benefits associated with requiring such review are *de minimis* both individually and in the aggregate. And even if, as some contend, the aggregate effects of small wireless facility deployment rendered the benefits of review more than *de minimis,* the FCC nonetheless determines that those benefits would be outweighed by the detrimental effects on the roll-out of advanced wireless service.

44. As further support for this conclusion, Sprint points in its comment to the Super Bowl as an example of the way that historic preservation review can impede broadband deployment with minimal to no benefit. In particular, Sprint deployed 23 small cells in Houston to upgrade its network in preparation for the crowds descending on Super Bowl LI. Even though the stadium construction itself did not involve any historic preservation consultation with Tribal Nations under Section 106 of the NHPA (because the stadium construction was not a Federal undertaking), carriers building an antenna in the parking lot were obligated by FCC rules to engage in the Section 106 process. And as with Sprint's other reviews since 2004, those reviews did not lead to any substantive consultation with Tribal Nations that revealed adverse impacts. That nonsensical result was purely a consequence of the Commission's discretionary decision to apply § 1.1312 to such small deployments. That the Commission's rule would lead to such an anomalous outcome—requiring environmental and historic preservation review of small wireless facilities deployed in the parking lot of an NFL stadium that did not itself require such review—highlights what the FCC sees as the misdirected public interest consequences that would result if the FCC applied § 1.1312's approval requirement to small wireless facility deployment.

45. In short, the record evidence persuades us that the costs to small wireless facility deployment attributable to § 1.1312's approval requirement far outweigh any incremental benefits of such environmental or historic preservation review.

3. Other Considerations Raised by Its Prior Rules and Comments in the Record

46. *1990 Order.* As explained above, the Commission's *1990 Order* (55 FR 20396 (May 16, 1990)) did not specifically address whether the public interest was served by subjecting small wireless facility deployments to § 1.1312's requirements. The FCC now does so and finds that it is not.

47. To the extent the *1990 Order* made a public interest determination with respect to large facilities, the FCC notes that it is not bound by that determination because its public interest analysis for small wireless facilities presents materially different considerations than the Commission confronted in the past. Although the Commission anticipated that § 1.1312 would ''establish[] an appropriate balance between section 319(d)'s purpose of expediting the delivery of communications services to the public'' and potentially countervailing environmental considerations, the reasoning in the *1990 Order* turns on materially different facts and assumptions than apply in the case of small wireless facility deployment. In particular, the Commission anticipated that its requirement would not ''significantly affect construction or . . . have any effect on the vast majority of facilities covered by the rule.'' In a world in which a relatively small number of large structures were being built, such predictions might have made sense. But with the high volume of small wireless facility deployments that the FCC anticipates being necessary to facilitate the provision of advanced wireless services, the FCC anticipates that absent Commission action significant numbers of deployments—in fact, the vast majority of them—will be significantly delayed and detrimentally affected without any actual historic preservation or environmental benefit.

48. *Geographic Area Licenses.* In determining that small wireless facilities are not subject to historic preservation or environmental review obligations, the FCC rejects the position offered by some commenters that mere issuance of a broad geographic area service license constitutes sufficient Federal action to convert small wireless facility deployments into undertakings and major Federal actions, triggering NHPA and NEPA review. Indeed, the Commission has never taken the position that every form of license or authorization demonstrates a sufficient Federal nexus to convert the separate deployment of facilities into a Federal undertaking or major Federal action. Nonetheless, certain commenters make general assertions that a geographic area service license could be sufficient to implicate NHPA and NEPA. The FCC disagrees and find the Commission's role regarding such deployment too limited to render the deployments ''undertakings'' under the NHPA or ''major Federal actions'' under NEPA.

49. As discussed above, the key consideration in determining whether a particular deployment is a Federal undertaking is the degree of Federal involvement, and the Commission has discretion to make the threshold determination as to whether that involvement exists. The FCC concludes that the Commission's issuance of a license that authorizes provision of wireless service in a geographic area does not create sufficient Commission involvement in the deployment of particular wireless facilities in connection with that license for the deployment to constitute an undertaking for purposes of the NHPA. Applying the relevant statutory text, the geographic area service license does not result in wireless facility deployment being ''carried out by or on behalf of a Federal agency.'' To the contrary, geographic area service licensing does not provide for Commission involvement in wireless facility deployment decisions. Geographic area service licenses also do not provide ''Federal financial assistance'' for wireless facility deployment. Nor is the geographic area service license ''a Federal permit, license or approval'' that must be obtained before wireless facility deployment can proceed. In particular, although geographic area service licenses are a legal prerequisite to the provision of licensed wireless service, and can affect entities' economic incentives to deploy small wireless facilities—insofar as the facilities can be used to offer the licensed service—neither the geographic area service license nor any other Commission approval is a legal prerequisite to the deployment of those particular facilities. In addition, viewing the deployment of small wireless facilities as an undertaking on the basis of geographic area service licenses is inconsistent with the manner in which Commission licensing occurs. In particular, although NHPA requires agencies to evaluate the effects of their undertakings before those undertakings occur, the FCC does not require any such determinations to take place prior to issuance of these licenses—thus, confirming that the issuance of the geographic area license itself is not the Federal undertaking. Indeed, the conduct at issue here—the physical deployment of particular infrastructure—occurs in a manner and at locations that the Commission cannot foresee at the time of licensing, as discussed in greater detail below. Under the geographic area service license, it is generally state and local zoning authorities that exercise their lawful authority regarding the placement of wireless facilities by private parties. The FCC thus does not find the issuance of a geographic area service license, in itself, to provide the requisite level of Commission involvement in wireless facility deployment to render that deployment an undertaking under relevant court precedent and ACHP guidance.

50. For the same basic reasons, the FCC concludes that the geographic area service license is insufficient to render deployment of wireless facilities in connection with that license a ''major Federal action'' under NEPA. As explained above, the geographic licensing does not cause associated wireless facility deployment to be ''carried out by or on behalf of'' the Commission, the licensing does not involve the provision of Federal funding for such deployments, nor is the license technically required before wireless facility deployment can proceed (in other words, while carriers generally obtain a geographic area service license before they deploy the facilities through which they will eventually provide that service, they are not legally required to obtain the license until they want to provide service). As noted above, courts treat ''major Federal actions'' under NEPA similarly to ''undertakings'' under the NHPA. Indeed, the ACHP points out ''major Federal actions'' are arguably narrower than ''undertakings'' in various ways. Insofar as ''major Federal actions'' under NEPA are narrower than the universe of ''undertakings'' under the NHPA, its conclusion regarding NEPA necessarily will be the same as that for NHPA. Court precedent directly applying NEPA in the first instance likewise supports its view that the virtually nonexistent Commission involvement in the deployment of wireless facilities under a geographic area service license takes wireless facility deployment outside the scope of ''major Federal action.'' The FCC thus finds the geographic area license itself insufficient to render wireless facility deployment in connection with that license ''major Federal action'' under NEPA.

51. The FCC distinguishes precedent cited by American Bird Conservancy, in which the Commission found that ''[t]he fact that a carrier's construction of facilities is authorized by rule rather than by action on an individual application does not eliminate the existence of federal action or affect its obligation to comply with NEPA and other federal environmental statutes.'' In that case, however, the Commission rule at issue directly authorized the construction of particular facilities. Here, by contrast, the geographic area license itself only authorizes transmissions. The FCC finds this is an insufficient connection to in itself cause the construction to constitute an undertaking under the NHPA or major Federal action under NEPA.

52. In addition, the FCC emphasizes that issuance of geographic service licenses is remote in both time and regulatory reach from the deployment of small wireless facilities. Any wireless facility deployment will happen after the Commission has issued the geographic service licenses, and will occur in a manner and at locations that the Commission cannot reasonably foresee at the time of licensing. As to geographic service licenses issued in the past, at the time the licenses were issued, it is unlikely that significant small wireless facility deployment itself would have been reasonably foreseeable. The deployment of small wireless facilities today is a function of marketplace decisions by private actors in light of applicable regulatory regimes, such as any state or local zoning requirements.

53. These characteristics of the Commission's regulatory approach to geographic service licensing support the view that NHPA and NEPA do not require Commission evaluation of any effects of small wireless facility deployment based on the issuance of such licenses. NHPA and NEPA require agencies to evaluate the effects of their undertakings or major Federal actions in advance of those undertakings or actions. Under the rules implementing NEPA and the NHPA and relevant court precedent, agencies need not consider effects of agency actions if they are not reasonably foreseeable. Because there is no plausible way for the Commission to meaningfully assess environmental and historic preservation effects associated with the deployment of small wireless facilities at the time geographic service licenses issue, the FCC concludes that there are no reasonably foreseeable effects that ''a person of ordinary prudence would take into account'' prior to issuing such licenses.

54. The Commission also does not possess authority it could exercise to regulate small wireless facility deployment to address environmental and historic preservation concerns given the public interest findings the FCC makes in this order. Agencies have no obligation to consider potential effects under NEPA or the NHPA if they cannot exercise authority to address them under their organic statutes. As relevant here, addressing environmental and/or historic preservation effects of small wireless facility deployment would

necessitate a review process to identify such concerns—but the FCC has found such a review process unwarranted under its public interest determination above. Because the FCC finds that such a requirement is not in the public interest for the deployment of small wireless facilities, the FCC cannot exercise the public interest authority to impose such duties. A contrary interpretation of its public interest authority under the Communications Act would require us to treat concerns under the NHPA and NEPA as dispositive. The FCC finds no grounds to believe that Congress intended the Commission, when exercising its Title III public interest authority, to summarily cast aside policy objectives of the Communications Act itself when interests implicated by NHPA or NEPA might be present. Instead, the FCC concludes that its approach of giving due consideration to the policy goals under Federal communications law along with those of the NHPA and NEPA better enables all relevant interests to be weighed in the public interest analysis. As clarified by its modification of § 1.1312 of the rules, its geographic service licensing regime thus reflects neither any intent or ability to regulate the deployment of small wireless facilities after this order.

55. The FCC also does not interpret language in the *1990 Order* to suggest that the Commission believed that Federal environmental statutes required it to adopt a condition that triggered those statutes for construction not otherwise subject to Commission approval. The *1990 Order* does not include an analysis of the degree of Federal control required to trigger Federal environmental and historic preservation statutes. Rather, the *1990 Order* addressed whether changes to an already-existing review requirement were warranted. To the extent that the Commission weighed historic preservation and environmental considerations in determining whether to amend its rules, the FCC reads those statements as part of its broader public-interest evaluation, not as an analysis of whether the rule's requirements constituted sufficient Federal involvement to rise to the level of a ''federal undertaking'' or ''major Federal action.''

56. *Other Comments.* Its public interest balancing also is not materially altered by claims that the potential for Commission-imposed review can alter decisions about how and where to deploy small wireless facilities by causing providers to tailor the manner or location of such deployments to avoid implicating environmental and historic preservation concerns. Commenters' arguments in this regard are generalized, and undercut by its conclusion that, as a class, the nature of small wireless facility deployments appears to render them inherently unlikely to trigger environmental and historic preservation concerns. For example, deployment of small wireless facilities commonly (although not always) involves previously disturbed ground, where fewer concerns generally arise than on undisturbed ground. In addition, as the Commission recently observed, ''[i]n implementing large-scale network densification projects that require deployment of large numbers of facilities within a relatively brief period of time, use of existing structures, where feasible, can both promote efficiency and avoid adverse impacts on the human environment.'' Based on the entire record before us, the FCC is not persuaded that requiring Federal environmental and historic preservation review for small wireless facility deployments will have a meaningful amount of benefits, particularly when this consideration is balanced against the other public interest considerations associated with promoting the deployment of small wireless facilities.

57. Because the FCC finds the record of claimed potential benefits to be limited and otherwise fundamentally speculative, the FCC also is not persuaded that some more streamlined review process or other alternative to the action the FCC takes is warranted in the public interest. For example, proposals to reduce the length of review would not eliminate the financial burdens of the review process, which would continue to delay deployment, whether required individually or on some aggregated basis. In addition, arguments that the Commission should exclude small wireless facilities from § 1.1312 when deployed in a narrower range of circumstances do not demonstrate sufficient benefits to justify the burdens § 1.1312 imposes even in a narrower context. The FCC further expects that the more generalized approach the FCC takes for small wireless facility deployments will provide greater clarity in implementation, rather than leaving providers with uncertainty about whether a given small wireless facility deployment is excluded. Finally, the FCC is not persuaded that it would be preferable to rely on programmatic agreements or similar measures to streamline or exclude small wireless facility deployment from review. Its amendment of § 1.1312 of the rules involves a public interest evaluation under the Communications Act—an Act the FCC is responsible for administering—while programmatic agreements involve negotiations among multiple external parties that need not account for such considerations. In addition, given the importance of fostering small wireless facility deployment, the FCC is not persuaded that negotiated agreements would be warranted—even assuming *arguendo* that they ultimately resulted in the same outcome—given the time required for their negotiation and the associated delay in facilitating small wireless facility deployment.

* * * * *

58. In sum, directly evaluating the question for the first time here, the FCC is not persuaded that it is in the public interest to exercise its limited reservation of authority to impose § 1.1312 on small wireless facility deployments and thereby trigger environmental and historic preservation review. Although the record does not enable a precise quantification of costs and benefits, it amply supports its conclusion that environmental and historic preservation review imposes burdens on small wireless facility deployment, and the FCC expects that these burdens will have a significant effect on small wireless facility deployment, at least in the aggregate, given the volume and nature of small wireless facility deployments that the FCC anticipates. Imposing such burdens would be at odds with several of its statutory mandates, and the FCC exercises its predictive judgment in finding that the benefits of eliminating these burdens will include hastening wireless deployment and freeing up funds for additional deployments that will benefit consumers, grow the economy, and strengthen the country's 5G readiness.

59. The FCC acknowledges, of course, the policy goals expressed by Federal environmental and historic preservation statutes. But Congress prescribed specific triggers for the obligations that those statutes impose on Federal agencies, persuading us that agencies' consideration of those statutes' more general policy pronouncements is simply to be weighed alongside consideration of its principal duties under its organic statutes. Thus, although the record does not persuade us of meaningful benefits that are likely to result from environmental and historic preservation review of small wireless facility deployments, even assuming *arguendo* that there are some benefits, the FCC is not persuaded that they are likely to overcome the harms

that the FCC finds run contrary to its responsibilities under the Communications Act, as informed by the Telecommunications Act of 1996. Accordingly, the FCC finds no basis to conclude here that it is in the public interest to apply § 1.1312 to small wireless facility deployment, triggering environmental and historic preservation review.

II. Streamlining NHPA and NEPA Review for Larger Wireless Facilities

A. Clarifying the Section 106 Tribal Consultation Process

1. Background

60. Notwithstanding its narrowing the scope of deployments subject to Section 106 and NEPA review, many constructions of wireless facilities will continue to be treated as Commission undertakings under the NHPA because they are subject to site-by-site licensing, they require antenna structure registration, or their size exceeds its definition of small wireless facility. The ACHP's regulations prescribe detailed procedures for the review of proposed undertakings, including consulting with Tribal Nations and NHOs. As authorized under the ACHP's rules, the Commission has entered into two NPAs and the ACHP has issued a program comment, each of which modifies the procedures set forth in the ACHP's rules to tailor them to different classes of Commission undertakings. § 1.1320 of the FCC's rules directs applicants, when determining whether a proposed action may affect historic properties, to comply with the ACHP's rules or one of these program alternatives.

61. An important component of the Section 106 process involves engaging and consulting with Tribal Nations and NHOs. section 101(d)(6) of the NHPA requires Federal agencies to consult with any Tribal Nation or NHO that attaches religious and cultural significance to a property eligible for inclusion on the National Register of Historic Places that may be affected by their undertakings. The ACHP rules implement that provision by requiring that agencies make a reasonable and good faith effort to identify such Tribal Nations or NHOs and invite them to be consulting parties. Procedures to implement this requirement are set forth in the Wireless Facilities NPA, which became effective in 2005. Properties to which Tribal Nations and NHOs attach cultural and religious significance are commonly located outside Tribal lands and may include Tribal burial grounds, land vistas, and other sites that Tribal Nations or NHOs regard as sacred or otherwise culturally significant. The consultation process for undertakings on Tribal lands is covered by separate provisions of the ACHP's rules, and is not addressed in this Order; as previously noted, nothing in this Order disturbs existing Commission practices for section 106 review on Tribal lands.

62. In order to efficiently connect parties seeking to construct facilities with Tribal Nations while respecting Tribal sovereignty, the FCC established the Tower Construction Notification System (TCNS). TCNS is an online, password-protected system that notifies Tribal Nations, NHOs, and State Historic Preservation Officers (SHPOs) (collectively, recipients) of proposed wireless communications facility deployments in areas of interest designated by the recipients. The system also provides a means for Tribal Historic Preservation Officers (THPOs) and other Tribal or NHO officials to respond directly to applicants as to whether they have concerns about the effects of the proposed construction on historic properties.

63. Tribal demands for fees that are not legally required to review projects submitted through TCNS have increased over the course of time. And though the FCC has taken steps to address these issues for small wireless facilities, the FCC takes further action here to address fee matters as they relate to the ongoing construction of macrocells and other large radio transmission facilities. The FCC also takes steps to make the Tribal participation process more efficient for applicants, Tribal Nations, and NHOs. The record details multiple issues causing confusion and delay in Tribal consideration of proposals submitted in TCNS. Many applicants have complained that there is uncertainty concerning how long a Tribal Nation will take in processing an application and that in some instances the process can extend for months or longer. Delays in obtaining Tribal comment on even a few individual sites can cause delays to larger projects and impede delivery of communications services to American consumers. In response, several Tribal commenters argue that most requests are handled in a timely manner. Moreover, Tribal governments have indicated that applicants often do not provide sufficient information in TCNS for a THPO or cultural preservation officer to opine as to whether a particular project may affect historic or cultural resources, thereby slowing the Tribal review process. The FCC addresses these concerns below.

2. Timeline for Initial Tribal Responses

64. The NPA states that Tribal Nations and NHOs ordinarily should be able to respond to communications from applicants within 30 days,but applicants are required to seek guidance from the Commission if a Tribal Nation or NHO does not respond to the applicant's inquiries. The Commission, in 2005, issued a Declaratory Ruling establishing a process that enables an applicant to proceed toward construction when a Tribal Nation or NHO does not timely respond to a TCNS notification.

65. In the *Wireless Infrastructure NPRM,* the Commission sought comment on the measures, if any, it should take to expedite the review processes for Tribal Nations and NHOs, either by amending the Wireless Facilities NPA or otherwise, while assuring that potential effects on historic preservation are fully evaluated. The Commission sought comment on whether the procedures established by the *2005 Declaratory Ruling* (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*)) were adequate to ensure the completion of section 106 review when a Tribal Nation or NHO is non-responsive. It also sought comment on whether these processes could be revised in a manner that would permit applicants to self-certify their compliance with the section 106 process and therefore proceed once they meet the Commission's notification requirements, without requiring Commission involvement. The Commission asked whether such an approach would be consistent with the Wireless Facilities NPA and with the Commission's legal obligations. The Commission also asked whether the information in FCC Form 620 or 621 is sufficient to meet the requirement that ''all information reasonably necessary'' has been provided to the Tribal Nation or NHO.

66. In response to the *Wireless Infrastructure NPRM,* many commenters contend that further improvements to the process for engaging Tribal Nations and NHOs in Section 106 review are warranted. Evidence in the record indicates that there are often delays associated with Tribal review and that these delays can significantly affect service providers' ability to complete Section 106 review and move toward deployment. Delays associated with Tribal engagement can be substantial, with estimates of the average time to complete Tribal review ranging between 75 and 110 days per project where Tribal review is required. Several Tribal

Nations, however, dispute such arguments and note that they provide timely responses to communications from applicants in the vast majority of cases. With the number of deployments needed to support expanded 4G and 5G network technologies, service providers are increasingly concerned about the delays they are experiencing. Tribal representatives, however, contend that their ability to provide timely responses is impeded by some applicants who fail initially to provide them with sufficient information to determine their interest in a proposed project. They contend that, without sufficient information, they are forced to go back to applicants and request the information they need and that delays often result from repeated attempts to obtain needed information. For example, Tribal commenters have noted applicants' omission of key information, such as a precise location and a full description of the proposed project, and information needed to assess potential effects. They also point out that many delays are the result of applicants' error, such as failing to submit information to the Tribal point of contact identified in TCNS, or in some instances, submitting information to the wrong Tribal Nation altogether.

67. The FCC takes several steps in this Order to make the Tribal participation process more efficient for applicants, Tribal Nations, and NHOs.

68. First, to address Tribal concerns with receiving insufficient information to identify potentially affected historic properties, the FCC clarifies that going forward applicants must provide all potentially affected Tribal Nations and NHOs with a Form 620 (new towers) or Form 621 (collocations) submission packet in cases where this form is prepared for the SHPO following the requirements established in the Wireless Facilities NPA. While applicants retain the option of sending an initial notification of a proposed project to Tribal Nations and NHOs through TCNS without a Form 620/621 submission packet to provide an early opportunity for a Tribal Nation or NHO to disclaim interest, as described further below, the time period for a Tribal response will not begin to run until an applicant sends the Form 620/621 submission packet or, when no Form 620/621 is required, the alternative submission discussed below. The Form 620/621 submission packet contains detailed information about proposed facilities, including their proposed location(s); the dimensions, scale, and description of proposed projects; and information about the potential direct effects and visual effects of the project. It also requires applicants to provide their contact information and to include attachments providing additional detail, such as photographs and maps of the proposed site. The FCC agrees with Tribal Nations and other commenters who contend that providing Tribal Nations and NHOs with this detailed set of information at the initial notification stage will enable them to determine more quickly whether a project may affect historic properties of religious and cultural significance to them. The FCC emphasizes to applicants the importance of completing the Form 620/621 submission packet accurately and completely. Complete and accurate information about proposed facilities, including, for example, a specific and correct site address or a detailed description of the location of proposed facilities if no address is available as well as a complete description of all elements of the proposed facility, is critical to enable Tribal Nations and NHOs to identify potentially affected historic properties. Thus, if this information is inaccurate or incomplete, the FCC will not consider the time period for Tribal response to have started.

69. The FCC disagrees that requiring applicants to send their Form 620/621 submission packet to Tribal Nations and NHOs would be inconsistent with the requirements of the Wireless Facilities NPA. To the contrary, the Wireless Facilities NPA requires that applicants provide Tribal Nations and NHOs with ''all information reasonably necessary for the [Tribal Nation] or NHO to evaluate whether [h]istoric [p]roperties of religious and cultural significance may be affected.'' The process the FCC establishes here is consistent with this requirement because it provides Tribal Nations and NHOs with more complete information to evaluate proposed projects. Moreover, under the revised process the FCC establishes, applicants retain the ability to make initial notifications to Tribal Nations and NHOs before sending them Form 620/621 submission packets.

70. The FCC finds that providing the detailed information included in the Form 620/621 submission packet constitutes a reasonable and good faith effort to provide the information reasonably necessary for Tribal Nations and NHOs to ascertain whether historic properties of religious and cultural significance to them may be affected by the undertaking. The record shows that some Tribal Nations request that applicants provide information such as ethnographic reports, SHPO concurrence letters, and other information in excess of what the Wireless Facilities NPA requires to be included in a Form 620/621 submission packet before making an initial determination about their interest in a proposed project. The FCC clarifies that to the extent that any such information exceeds what is required under the Wireless Facilities NPA to be included in a Form 620/621 submission packet, the FCC requires the applicant to provide it, if necessary, only after a Tribal Nation or NHO has indicated that a historic property may be affected and has become a consulting party. Thus, to the extent that Tribal Nations or NHOs currently have auto replies in TCNS requesting additional information from applicants, the Commission will remove such language.

71. The FCC further clarifies that, if a Tribal Nation or NHO conditions its response to an applicant's submission packet on the receipt of additional information beyond that required in the Form 620/621 submission packet, an applicant should respond that the FCC does not require the applicant to provide this information. If the Tribal Nation or NHO subsequently fails to indicate concerns about a historic property of traditional religious and cultural significance that may be affected by the proposed construction, the applicant may make use of the process described below for addressing instances in which Tribal Nations and NHOs do not initially respond. To the extent that Tribal Nations or NHOs seek to clarify information presented in the Form 620/621 submission packet, such as by requesting an explanation of the photographs included in the submission packet, the FCC encourages applicants to provide the requested clarifications, and the parties may copy Commission staff on communications related to such requests. If circumstances require the Commission to help resolve a dispute about whether a Form 620/621 submission packet or alternative submission has been properly completed or other cases that may present unique issues, Commission staff will provide assistance when it is requested. In bringing a dispute to Commission staff, an objecting party should provide a complete and detailed explanation of the basis of the dispute, evidence regarding the information the applicant has provided to the Tribal Nation or NHO, and all communications between the applicant and the Tribal Nation or NHO.

72. In cases in which a Form 620/621 submission packet is not required to be prepared for the SHPO because the construction does not require SHPO review, the FCC adopts a different procedure. The Wireless Facilities NPA

ordinarily excludes from Section 106 review by the SHPO, the Commission, and the ACHP certain categories of undertakings deemed to have minimal to no potential to affect historic properties. For two of these excluded categories, however, applicants are still required to identify and contact Tribal Nations and NHOs to ascertain whether historic properties of religious or cultural significance to them may be affected. In these instances where no Form 620/621 submission packet is otherwise prepared, the FCC requires applicants to provide Tribal Nations and NHOs with information adequate to fully explain the project and its location. At minimum, this alternate submission must include contact information for the applicant, a map of the proposed location of the facility, coordinates of the proposed facility, a description of the facility to be constructed including all proposed elements (such as, for example, access roads), and a description of the proposed site, including both aerial and site photographs. Given that applicants are not otherwise required affirmatively to identify historic properties within the Area of Potential Effects for these undertakings (other than the limited inquiry necessary to determine whether the exclusion applies), the FCC finds that this package constitutes an adequate baseline set of information to enable Tribal Nations and NHOs to comment on these projects. The FCC therefore disagrees with the contention that the FCC is required to provide Tribal Nations and NHOs with all the information contained in Form 620/621 in these instances.

73. The FCC turns next to the timeframe for Tribal Nations and NHOs to respond to notifications by indicating any concerns about potentially affected historic properties. The FCC clarifies that the 30-day period for a Tribal response provided in the Wireless Facilities NPA will begin to run on the date that the Tribal Nation or NHO can be shown to have received or may reasonably be expected to have received the Form 620/621 submission packet (or the alternative submission where no 620/621 packet has been prepared). Consistent with existing practice, applicants may use TCNS to provide an initial notification to Tribal Nations and NHOs about proposed facility deployments. As noted above, TCNS automatically notifies Tribal Nations and NHOs of proposed construction within the geographic areas they have identified as potentially containing historic properties of religious and cultural significance to them. A Tribal Nation or NHO receiving a notification of proposed construction through TCNS, however, is under no obligation to respond until it receives a Form 620/621 submission packet (or alternative submission). The 30-day period for a response indicating whether the Tribal Nation or NHO has concerns about a historic property of traditional religious and cultural significance that may be affected by the proposed construction will begin to run on the date that the Tribal Nation or NHO can be shown to have been, or may reasonably be expected to have been, notified that a Form 620/621 submission packet or alternative is available for viewing via TCNS. The FCC is cognizant of Tribal concerns that applicants sometimes submit information to outdated points of contact or deviate from Tribal Nations' preferred means of communications. Therefore, the FCC reminds applicants that, consistent with the requirements in Section IV of the Wireless Facilities NPA, contact and communications shall be made in accordance with preferences expressed by the Tribal Nation or NHO, and misdirected communications will not begin the period for Tribal response unless and until they are actually received. Where the Tribal Nation or NHO is notified by email that a Form 620/621 submission packet has been submitted, the submission packet is presumed to have been received on the day the submission packet is provided. Where the applicant sends the notification through the mail, the FCC will presume that the packet may reasonably be expected to have been received by no later than the fifth calendar day after the date it is sent.

74. In addition to clarifying when the initial 30-day timeframe for Tribal response begins to run, the FCC also establishes a new procedure to address instances in which Tribal Nations or NHOs fail to respond after receiving a Form 620/621 submission packet. As noted above, the *2005 Declaratory Ruling* established a process to enable an applicant to proceed toward construction when a Tribal Nation or NHO does not respond to a TCNS notification in a timely manner. The Wireless Facilities NPA requires that, if an applicant does not receive a response after contacting a Tribal Nation or NHO, the applicant is required to make a reasonable attempt to follow up. Under the *2005 Declaratory Ruling,* if the Tribal Nation or NHO does not respond to a second contact within 10 calendar days after the initial 30-day period, the applicant can refer the matter to the Commission for guidance. Upon receiving a referral, the Commission contacts the Tribal Nation or NHO by letter or email to request that it inform the Commission and the applicant within 20 calendar days whether it has an interest in participating in the Section 106 review. In addition, Commission staff attempts a phone call unless the Tribal Nation or NHO has indicated it does not wish to receive calls. The Commission also informs the applicant when its letter or email has been sent. If the Tribal Nation or NHO does not respond within 20 days of the date of the Commission's written communication, it is deemed to have no interest in pre-construction review and the applicant's pre-construction obligations under the Wireless Facilities NPA are discharged with respect to that Tribal Nation or NHO. Together, these procedures provide for a 60-day process for resolving cases where a Tribal Nation or NHO fails to provide a timely response to an initial notification provided through TCNS.

75. In this Order, the FCC replaces the procedures outlined in the *2005 Declaratory Ruling* with new procedures that establish a 45-day process for moving forward with construction in cases in which Tribal Nations or NHOs do not respond after having been given the opportunity to review a Form 620/621 submission packet, or when no Form 620/621 submission is required, an alternative submission. Under the process the FCC adopts here, if an applicant does not receive a response within 30 calendar days of the date the Tribal Nation or NHO can be shown or may reasonably be expected to have received notification that the Form 620/621 submission packet (or alternative submission) is available for review, the applicant can refer the matter to the Commission for follow-up. To facilitate prompt processing of its request, the applicant may submit its referral via TCNS. Upon receiving a referral, the Commission will contact promptly (and, in any case, within five business days) the Tribal Nation's or NHO's designated cultural resource representative by letter and/or email to request that the Tribal Nation or NHO inform the Commission and applicant within 15 calendar days of the date of the letter and/or email of its interest or lack of interest in participating in the section 106 review. The Commission also will inform the applicant when this letter and/or email has been sent, either by copying it on the correspondence or by other effective means. If the Tribal Nation or NHO does not respond within 15 calendar days, the applicant's pre-construction obligations are discharged with respect

to that Tribal Nation or NHO. As discussed above, the FCC establishes here that the information in the Form 620/621 submission packet (or the alternative submission where no 620/621 packet has been prepared) will be considered sufficient for Tribal Nations and NHOs to comment on proposed projects.

76. The FCC concludes that these revised procedures satisfy the Commission's obligation to make reasonable and good faith efforts to identify Tribal Nations and NHOs that may attach religious and cultural significance to historic properties that may be affected by an undertaking, as specified by the Wireless Facilities NPA and as required under the NHPA and the rules of the ACHP. The revised procedures the FCC adopts will provide Tribal Nations and NHOs with a total period of 45 days to provide a response to an applicant's notification of a proposed construction. The 45-day period will also include a Commission-initiated reminder after 30 days have elapsed. While the process the FCC adopts provides less time for Tribal review than the process established in the *2005 Declaratory Ruling,* it nonetheless allows a longer opportunity to respond than the 30-day period that the Wireless Facilities NPA stipulates as an ordinarily reasonable period for Tribal review. Overall, the FCC concludes that the procedures the FCC adopts here are reasonable and consistent with its consultation responsibilities.

77. The FCC rejects requests for the Commission to allow applicants to move forward unilaterally without Commission involvement in the absence of a response from a Tribal Nation or NHO. The processes the FCC establishes herein are consistent with the provisions of the Wireless Facilities NPA that outline applicants' responsibilities with respect to Tribal Nations and NHOs. Section IV of the Wireless Facilities NPA stipulates that a Tribal Nation's or NHO's failure to respond to a single communication does not establish that the Tribal Nation or NHO is not interested in participating in the review of a proposed construction, and it requires applicants to seek guidance from the Commission in cases where a Tribal Nation or NHO does not respond to the applicant's inquiries. The revised procedures the FCC adopts here are faithful to these requirements by providing multiple opportunities for Tribal Nations and NHOs to express their interest in proposed constructions and by involving the Commission in the consultation process when an applicant has not received a response to its attempted communications. Moreover, the FCC expects that the revised procedures the FCC establishes here will reduce delays and facilitate resolution of cases where Tribal Nations or NHOs have not provided timely responses.

3. Tribal Fees

78. In the *Wireless Infrastructure NPRM,* the FCC sought comment on a number of questions related to fees charged by Tribal Nations for their participation in the section 106 process. In this section, the FCC interprets the Commission's and applicants' obligations under the NHPA and the Wireless Facilities NPA, in light of ACHP guidance, to clarify that applicants are not required to pay fees requested by Tribal Nations or NHOs that have been invited to participate in the section 106 process. The FCC also clarifies the circumstances under which an applicant may be required to retain an appropriately qualified expert, who may be a representative of a Tribal Nation or NHO, to perform consultant services for which that expert may reasonably expect to be compensated.

79. Neither the NHPA nor the ACHP's implementing regulations expressly address fees, nor does the Wireless Facilities NPA, but the ACHP, as the agency charged with implementing the NHPA, has issued guidance on the subject in a 2001 memorandum and as part of a handbook last issued in 2012. The ACHP's guidance repeatedly makes clear that the proponent of an undertaking is not required to accede to unilateral requests for payment. Rather, the agency (in its case, through its applicants) ''has full discretion'' on how to fulfill its legal obligation—namely the obligation to make ''reasonable and good faith efforts'' to identify historic properties that may be affected by its undertaking and invite potentially interested Tribal Nations and NHOs to be consulting parties.

a. Up-Front Fees

80. Consistent with the Wireless Facilities NPA, once an applicant, through TCNS, has identified that particular Tribal Nations or NHOs may attach religious and cultural significance to historic properties located in the area that may be affected by an undertaking, the applicant contacts each such Tribal Nation or NHO, typically through TCNS, to ascertain whether there are in fact such properties that may be affected. The record indicates that, at this stage in the section 106 review, some Tribal Nations are directing applicants to pay an ''up-front fee'' before the Tribal Nation will respond to the contact. At no time to date has the Commission explicitly endorsed such up-front fees. The FCC now clarifies, consistent with ACHP guidance, that applicants are not required to pay Tribal Nations or NHOs up-front fees simply for initiating the Section 106 consultative process.

81. At the time the Wireless Facilities NPA was adopted and TCNS was implemented, Tribal Nations generally did not request fees to review proposed constructions upon receiving notification. Over time, however, some Tribal Nations began assessing fees at notification, and gradually it became a more common practice. In addition, the amounts of these fees have increased significantly over the years, and industry commenters assert that the rate of increase itself has risen sharply in recent years. CCA contends, for example, that one of its member companies reports that the average amount it pays in Tribal fees increased from $381.67 per project in 2011 to more than $6,300 for projects in late 2016 to early 2017. Consequently, industry commenters ask that the Commission provide guidance on up-front fees. AT&T, for example, asks the Commission to establish that, ''if a carrier does not ask for 'specific information and documentation' from the Tribal Nation, pursuant to the ACHP Handbook, then no contractor relationship has been established and no payment is necessary.'' NATHPO, on the other hand, argues that the relative rarity of instances in which tower construction has harmed historic properties demonstrates that the current system works, and it urges the Commission not to take actions that would limit Tribal capacity to become involved in the process.

82. The ACHP's 2001 fee guidance memorandum addresses the practice of Tribal Nations and NHOs charging fees for their participation in the section 106 process. In that memorandum, the ACHP distinguishes between Tribal Nations participating in section 106 reviews in their capacity as government entities with a designated role in the process versus the possibility that they may be engaged to provide services in a different capacity, that of a consultant or contractor. The former capacity entails no obligation or expectation for the applicant to pay fees. The ACHP 2001 Fee Guidance explains that ''the agency or applicant is not required to pay the tribe for providing its views.'' The ACHP 2012 Tribal Consultation Handbook echoes this guidance, and 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.'' 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 Handbook does acknowledge that there may be circumstances in which payment is reasonably expected, but not merely for acting in the Tribal Nation's governmental capacity:

> . . . during the identification and evaluation phase of the Section 106 process when the agency or applicant is carrying out its duty to identify historic properties that may be significant to an Indian tribe, it may ask a tribe for specific information and documentation regarding the location, nature, and condition of individual sites, or even request that a survey be conducted by the tribe. In doing so, the agency or applicant is essentially asking the tribe to fulfill the duties of the agency in a role similar to that of a consultant or contractor. In such cases, the tribe would be justified in requesting payment for its services, just as is appropriate for any other contractor.

83. The up-front fees requested by some Tribal Nations for providing their initial assessment as part of the Section 106 review process do not compensate Tribal Nations for fulfilling specific requests for information and documentation, or for fulfilling specific requests to conduct surveys. They are more in the nature of a processing fee, in exchange for which the Tribal Nation responds to the applicant's contact, and to the extent necessary, reviews the materials submitted before indicating whether the Tribal Nation has reason to believe that historic properties of religious and cultural significance to it may be affected. In recognition of ACHP guidance and having reviewed the record, the FCC affirms that applicants are not required to pay up-front fees to Tribal Nations and NHOs to initiate section 106 reviews. Thus, fees need not be paid to obtain a response to an applicant's initial contact with a Tribal Nation or NHO and, to the extent that Tribal Nations or NHOs currently have auto replies in TCNS requesting that applicants pay up-front fees, the Commission will remove such language. If a Tribal Nation or NHO nevertheless purports to condition its response to an applicant's TCNS contact on the receipt of up-front compensation, the FCC will treat its position as a failure to respond, and the applicant will be able to avail itself of the process discussed above for when a Tribal Nation or NHO fails to supply a timely response. The FCC finds such an approach to be consistent with the ACHP's guidance that, where 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.''

84. A number of Tribal Nations have argued that Tribal sovereignty prohibits the Commission from establishing rules about fees. The FCC emphasizes that no action it takes here questions or interferes with Tribal Nations' rights to act as sovereigns. The FCC does not dictate or proscribe any actions by Tribal Nations. The FCC simply clarifies that nothing in the applicable law of the United States—the NHPA, ACHP rules, and the Wireless Facilities NPA—*requires* applicants (or the Commission for that matter) to pay up-front fees as part of the Section 106 process. Accordingly, Tribal Nations remain free to request upfront fees and applicants may, if they choose, voluntarily pay such fees. If, however, a Tribal Nation or NHO opts not to provide its views without an up-front payment, and the applicant does not voluntarily agree to provide the payment, consistent with the ACHP's guidance, its obligations have been satisfied and the FCC may allow its applicant to proceed with its project after the 45-day period described above.

85. Some Tribal Nations assert that they are entitled to up-front fees to compensate them for the effort or cost of participating in the section 106 process. For instance, some Tribal commenters have indicated that they rely upon up-front fees to fund their section 106 activities or to eliminate the administrative burden of calculating actual costs incurred in reviewing each TCNS submission. Other Tribal commenters maintain that they should be compensated because their up-front fees are meant to cover their actual average costs associated with reviewing and commenting on commercial projects. While this may be true, the fact remains that the law and applicable guidance do not require the Commission and its applicants to compensate Tribal Nations and NHOs for providing their comments or views in the context of the section 106 process. Moreover, in light of its decision above to require that an applicant provide a completed FCC Form 620/621 or alternative submission when a project is proposed within a Tribal Nation's or NHO's geographic area of interest, the FCC finds that in most instances, a Tribal Nation or NHO should have sufficient information to provide comment on the undertaking and its potential to affect an historic property of significance to it. In assessing the applicant's submission during the initial consultation stage, the FCC believes it reasonable to expect a Tribal Nation or NHO to rely on information already in its possession. If a Tribal Nation elects to conduct research to obtain this information, however, the ACHP's guidance does not assign responsibility to applicants to fund such research.

86. While certain commenters claim they should be entitled to a share of revenue from commercial ventures that may impact their cultural heritage, the fact that its applicants frequently are for-profit entities is irrelevant to whether fees for non-consultant services should be required. Finally, some commenters assert that Tribal Nations act in a consultant capacity and therefore are entitled to compensation at all stages of a project, including from the moment the review process begins. The FCC disagrees, as such an interpretation conflicts with ACHP guidance indicating when fees may be appropriate. In the section that follows, the FCC discusses the ACHP's guidance on consultant fees.

b. Consultant Fees

87. As noted above, the ACHP's 2001 fee guidance memorandum states 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 applicant or agency ''should expect to pay for the work product.'' The FCC sought comment in the *Wireless Infrastructure NPRM* on the circumstances under which a Tribal Nation or NHO might act as a contractor or consultant and expect compensation, as well as whether and how the Commission might provide guidance regarding the fees to be paid for such services. The FCC also sought input on how a Tribal Nation's or NHO's request for fees interacts with the obligation to use reasonable and good faith efforts to identify historic properties.

88. In addition to requests for up-front fees addressed above, Tribal Nations have requested payment for activities undertaken after the initial determination that historic properties are likely to be located in the site vicinity, including monitoring and other activities directed toward completing the identification of historic properties as well as assessing and mitigating the project's impacts on those properties. As described more fully below, the FCC finds that while an applicant may

negotiate and contract with a Tribal Nation or NHO for such services, an applicant is not obligated to hire a Tribal Nation or accede to Tribal requests for fees in the absence of an agreement.

89. As noted above, ACHP guidance states that no ''portion of the NHPA or the ACHP's regulations require an agency or an applicant to pay for any form of Tribal involvement'' in section 106 reviews. Thus, as discussed above, when a Tribal Nation or NHO is participating in the section 106 review process in response to a notification or request to consult on the identification of historic properties, payment is not required. The ACHP acknowledges that an agency or applicant may *ask* a Tribal Nation or NHO to perform work, such as providing specific information or documentation or conducting surveys—just as the applicant may negotiate a commercial agreement with any other qualified contractor. If the applicant asks the tribal Nation or NHO to perform work, ''the agency or applicant essentially is asking the tribe to fulfill the duties of the agency in a role similar to that of a consultant or contractor. In such cases, the tribe would be justified in requesting payment for its services, just as is appropriate for any other contractor.'' Applying the ACHP's guidance, the FCC finds that, if an applicant asks a Tribal Nation or NHO to perform work of the type described by the ACHP, the applicant should expect to negotiate a fee for that work. If, however, the applicant and the Tribal Nation or NHO are unable to agree on a fee, the applicant may seek other means to fulfill its obligations. The ACHP Handbook specifically addresses this scenario: ''The agency or applicant is free to refuse just as it may refuse to pay for an archaeological consultant, but the agency still retains the duties of obtaining the necessary information for the identification of historic properties, the evaluation of their National Register eligibility, and the assessment of effects on those historic properties, through reasonable means.'' In other words, so long as the underlying obligation to make reasonable and good faith efforts to identify historic properties is satisfied, the applicant is not bound to any particular method of gathering information.

90. The FCC emphasizes that while applicants must make reasonable and good faith efforts, they are not required to make every possible effort to identify potentially affected properties. In fact, the ACHP regulations ''*do not require* identification of all properties'' (emphasis in original). The ACHP makes this clear in its guidance on ''Meeting the 'Reasonable and Good Faith' Identification Standard in section 106 Review.'' In that document, the ACHP states that:

> ''[i]t is . . . important to keep in mind what a reasonable and good faith effort does *not* require:
>
> The ''approval'' of a SHPO/THPO or other consulting party. The ACHP, SHPO/THPO and other consulting parties advise and assist the federal agency official in developing its identification efforts, but do not dictate its scope or intensity.
>
> Identification of every historic property within the APE. One of the reasons the ACHP's regulations contain a post-review discovery provision (36 CFR 800.13) is that a reasonable and good faith effort to identify historic properties may well not be exhaustive and, therefore, some properties might be identified as the project is implemented.''

That is to say, perfection is not required in the section 106 review process. Thus, the mere possibility that *every* possible historic property may not be identified does not inherently render the applicant's efforts inadequate.

91. In addition to charging fees to assist in the identification of historic properties, some Tribal commenters have suggested that they are entitled to compensation for monitoring or other services they find necessary to assess impacts and mitigate adverse effects once historic properties have been identified. In these instances, the same principle applies as in the case of fee requests to assist in identification of historic properties. That is, the applicant is ultimately responsible for satisfying its obligations under the FCC's rules, including the Wireless Facilities NPA. The applicant must invite a Tribal Nation or NHO that identifies a historic property of religious and cultural significance that may be affected to become a consulting party and must provide it with all of the information, copies of submissions, and other prerogatives of a consulting party. The Tribal Nation or NHO will have the opportunity to provide its views on the potential effect on the identified historic property, and to comment on alternatives to avoid or mitigate any harm. The applicant is not presumed to be required to engage the services of any particular party, including a Tribal Nation or NHO, either to identify historic properties or to monitor efforts to avoid or minimize harm. An applicant is free to engage a Tribal Nation or NHO as a paid consultant at any point in the section 106 process, but it is under no obligation to do so. While a Tribal Nation or NHO, in certain circumstances, may possess the greatest knowledge relevant to assessing a particular site, the obligation placed on the Commission and applicants under the ACHP rules and the Wireless Facilities NPA requires only a reasonable and good-faith review.

92. Consistent with the ACHP's guidance, the FCC finds that an applicant is not required to hire any particular person or entity to perform paid consultant services. To the contrary, the FCC expects that competition among experts qualified to perform the services that are needed will generally ensure that the fees charged are commensurate with the work performed. To ignore these dynamics would be fundamentally inconsistent with the notion that an agency and its applicants throughout the section 106 process are only required to exercise reasonable efforts. The applicant may generally hire any properly qualified consultant or contractor when expert services are required, whether in the course of identifying historic properties, assessing effects, or mitigation. The appropriate qualifications will depend upon the work to be performed. For example, different qualifications may be needed to confirm the presence or absence of archeological properties during a site visit, to apply traditional knowledge in assessing the significance of above-ground features, or to monitor construction. In any event, the Wireless Facilities NPA stipulates that with respect to the identification and evaluation of historic properties, any assessment of effects shall be undertaken by a professional who meets the Secretary of the Interior's Professional Qualification Standards.

93. In addition, the FCC finds that inherent in the ACHP's guidance recognizing that an applicant may choose to engage a Tribal Nation or NHO to provide services is the corollary that a Tribal Nation or NHO need only be compensated for fulfilling its role as a consultant or contractor where there is an agreement in place between the Tribal Nation and the applicant to perform a compensable service. Without such an agreement, the applicant has not undertaken to engage the Tribal Nation or NHO, and it is not compelled to comply with a unilateral request for fees.

94. Finally, there may be individual cases in which the applicant and a Tribal Nation or NHO disagree on whether the applicant has met the reasonable and good faith standard in connection with the hiring of paid consultants, including considerations of whether consultant services are necessary, what qualifications are required, and whether the applicant's chosen consultant meets those

qualifications. In particular, there may be disputes about whether the applicant has obtained a qualified consultant or has unreasonably refused to use a Tribal Nation or NHO as a consultant in light of the amount of the fee requested by the Tribal Nation or NHO for such services. In such cases, either party may ask the Commission to decide whether the applicant's obligations have been satisfied, and Commission staff will continue to make determinations where it has been provided with complete information and evidence as described below. In case of a dispute, the applicant will have the burden of stating facts to substantiate its claim that it has met the reasonable and good faith standard in connection with the hiring of paid consultants within 15 days of being directed to do so. After the applicant has stated such facts, the objecting party will then have the burden of stating facts showing that the applicant has not met such standard within 15 days of being directed to do so. In determining whether the reasonable and good faith standard has been met, Commission staff will consider all relevant facts, including but not limited to ''the special expertise possessed by Indian tribes and Native Hawaiian organizations in assessing the eligibility of historic properties that may possess religious and culture significance to them;'' the nature and significance of the historic property at issue, the fees sought by the Tribal Nation or NHO; the qualifications and expertise of, and fees charged by, other paid consultants, either on the project in question or in comparable situations; the qualifications of any consultant that the applicant wishes to engage in lieu of a Tribal consultant, and all actions the applicant has taken to satisfy its obligations.

B. Reforming the FCC's Environmental Review Process

95. Separate and apart from the section 106 process, the *Wireless Infrastructure NPRM* sought comment on ways the Commission might streamline its environmental compliance regulations and processes while ensuring it meet its NEPA obligations. In particular, the Commission sought comment on whether to revise or eliminate § 1.1307(a)(6) of the rules, which governs EAs or proposed facilities located in floodplains, and on any measures it could take to reduce unnecessary processing burdens consistent with NEPA. The FCC now takes actions to address both of these concerns.

96. The Commission's rules require an applicant to prepare and file an EA if its proposed construction meets any of several conditions specified in the rules, designed to identify construction that is located in an environmentally sensitive area or that has other potentially significant environmental impacts. All other constructions are categorically excluded from environmental processing unless the processing bureau determines, in response to a petition or on its own motion, that the action may nonetheless have a significant environmental impact. In implementing NEPA, the Commission has delegated preparation of EAs to applicants. Nevertheless, the Commission is responsible for the EA's content, scope, and evaluation of environmental issues.

97. If the applicant files an EA, then members of the public are given the opportunity to file informal complaints or petitions to deny. Commission staff review the application and any informal complaints or petitions to deny that have been filed, and consider whether the proposed facility will cause any significant impacts on the environment. If such impacts are found, the applicant is given an opportunity to reduce, minimize, or eliminate the impacts by changing some aspect of the project. If no such impacts are found, or once any impacts that are found have been reduced below the level of significance, then the Commission staff completes the environmental review process by issuing a Finding of No Significant Impact (FONSI). The rules forbid the applicant from initiating any construction activities until the FONSI is issued.

98. The following sections (1) adopt changes to the rules governing facilities located in floodplains; and (2) implement procedural changes to accelerate the environmental review process. Consistent with the Commission's past practice, where other Federal agencies have assumed responsibility for environmental review of proposed facilities, such as the Bureau of Indian Affairs on Tribal lands it oversees, the Commission defers to those agencies' own NEPA practices. The FCC continues that policy in this order, and therefore the measures adopted below do not apply on Tribal lands.

1. Environmental Assessments of Facilities Located in Floodplains

99. In the *Wireless Infrastructure NPRM,* the Commission sought comment on whether to revise or eliminate § 1.1307(a)(6) of the rules, which governs environmental assessments of proposed facilities located in floodplains. Specifically, the Commission sought comment on whether to revise its rules to remove the EA requirement for ''siting in a floodplain when appropriate engineering or mitigation requirements have been met.'' The Commission recognized that many parties advocated that ''EAs . . . be eliminated for deployments on flood plains . . . if a site will be built at least one foot above the base flood elevation and a local building permit has been obtained.'' For the reasons discussed below, the FCC hereby amends this rule to eliminate the requirement for an EA if a proposed facility meets certain engineering requirements intended to mitigate environmental effects.

100. A floodplain is defined as a relatively flat lowland area adjacent to inland or coastal waters that faces a significant chance of flooding each year. Large portions of the country lie within floodplains, including areas where an estimated 10 percent of Americans live. The devastating consequences of large-scale flooding caused by natural disasters—such as Hurricanes Harvey, Irma, Maria, and Nate within the past year—starkly illustrate the potential hazards that flooding may pose to life and property in flood-prone areas. In particular, the flooding in the wake of these storms ''devastated . . . the communications networks that serve'' communities and poses concerns about ''the resilience of the communications infrastructure [and] the effectiveness of emergency communications'' in these areas.

101. To address these risks, Congress has enacted laws intended to anticipate and minimize flood risks by encouraging development outside flood-prone areas if possible and by promoting land-management policies and construction techniques that reduce or mitigate the risk of flood damage. The Commission's rule, which references Executive Order 11988, requires the submission of an EA for facilities to be constructed in a floodplain.

102. Section 1.1307(a)(6) of the Commission's rules requires a party proposing to deploy a facility such as a wireless antenna tower in a base floodplain to submit an EA. The EA requirement under this provision is triggered solely by the facility's location in a floodplain. The Commission's rules, however, do not identify the criteria an applicant must satisfy to address potential environmental effects of facilities in floodplains.

103. Informal staff guidelines available on the Commission's website state that EAs for proposed facilities located in floodplains should include

(1) a copy of the section of a Federal Emergency Management Agency (FEMA) map showing the proposed site location; and (2) a copy of the building permit issued by the local jurisdiction (or, if such a permit is unavailable, other independent verification) confirming that the proposed structure will be at least one foot above the base flood elevation of the floodplain. Thus, the primary focus of Commission review in issuing a FONSI is whether the facility is in the floodplain and, if it is, whether the proposed structure is at least one foot above the base flood elevation of that floodplain.

104. The FCC finds that a more streamlined NEPA review framework would be as effective as the existing rules in carrying out its NEPA obligations with respect to facilities located in floodplains and would more efficiently promote its infrastructure deployment goals. Specifically, as discussed below, the FCC will dispense with the existing requirement that an applicant file an EA solely due to the location of a proposed facility in a floodplain, so long as such proposed facility, including all associated equipment, is at least one foot above the base flood elevation of the floodplain. By avoiding the direct costs of preparing unnecessary EAs, as well as the costly impact of procedural delays, this change will increase providers' capacity to invest in deploying more facilities; and the time saved by skipping the time-consuming review process will enable them to accelerate such deployments. At the same time, the one-foot elevation requirement will continue to ensure that such deployments are properly sited to avoid adverse floodplain impacts.

105. Comments filed by state transportation officials, infrastructure developers, and wireless carriers support its conclusion that the current floodplain-related EA filing and review process imposes excessive burdens that are not justified by offsetting benefits. The Washington State Department of Transportation points out that communications projects often ''can be located in a floodplain without having a direct or indirect impact on floodplain function,'' and accordingly, suggests that an EA should not be required routinely ''solely because an action is sited in a floodplain.'' Several infrastructure and service providers report that the vast majority of the EAs they have been required to prepare were for deployments sited in floodplains, yet the Commission staff ultimately issued FONSIs for all of them, with no need for mitigation measures or other changes. Preparation of such EAs may require consulting services that, according to some commenters, often cost thousands of dollars and several months of time.

106. Many parties argue that EAs for floodplain deployments are redundant because local zoning authorities review the same projects and grant construction permits only after confirming that they comply with floodplain-related requirements in their building codes. These parties contend that the Commission conducts no independent analysis or data-gathering, but rather simply relies on local authorities' building permits to confirm compliance with the identical floodplain-related criterion that the proposed structure will be at least one foot above the base flood elevation. In light of these considerations, many commenters argue that the Commission should revise its rules to require EAs for deployments sited in floodplains *only* if the facilities and associated equipment are *not* located at least one foot above the base flood elevation and/or have not been issued building permits confirming that they satisfy this criterion. Others contend that the Commission's floodplain EA requirement should be eliminated altogether.

107. The FCC acknowledges concerns raised by commenters about maintaining technical requirements for constructing facilities in floodplains to mitigate the risks of damage caused by hurricanes. The 2017 U.S. hurricane season highlights the critical importance of employing proper engineering and design techniques to mitigate or minimize flood-related risks, assure public safety, maintain the resiliency of communications networks, and protect the natural environment. The FCC notes that state and local zoning and construction requirements, FEMA requirements, and other relevant laws will, of course, continue to ensure that these important considerations are addressed.

108. To address both industry's efficiency concerns and the concerns expressed in the record about the potential effects of inappropriate construction in floodplains, the FCC amends § 1.1307(a)(6) to eliminate the requirement that applicants file an EA for facilities to be constructed on a flood plain, provided that the facilities, including all associated equipment, are constructed at least one foot above the base flood elevation. The FCC believes that facilities built in compliance with this new rule will ''reduce the risk of flood loss [and] minimize the impact of floods on human safety, health and welfare.'' Accordingly, provided that no other criteria trigger an EA under its rules, such projects will have no significant effects on the quality of the human environment, within the meaning of NEPA, that would require the preparation of EAs or other environmental processing.

109. The FCC concludes that this new, streamlined regulatory framework fully satisfies its obligations under NEPA and maintains regulatory oversight to ensure continued implementation of practices that protect against environmental degradation that otherwise could be caused by construction of facilities in floodplains. At the same time, the elimination of the EA-filing requirement and pre-construction environmental processing by the Commission will enable providers to build these facilities more rapidly and at lower cost. It thus will make a significant contribution towards advancing its objective of removing regulatory processes and burdens that dampen investment and hamper deployment of wireless communications infrastructure. As a result, this new framework for floodplain deployment should help promote expedited deployment of the facilities needed to bring advanced technologies and services to consumers across the country.

2. Timeframes for Commission To Act on Environmental Assessments

110. As noted above, the *Wireless Infrastructure NPRM* sought comment on ways the Commission could reduce unnecessary processing burdens by streamlining the environmental review procedures that it is required to conduct before the deployment of infrastructure is authorized. Here, the FCC commits to timeframes for reviewing and processing EAs in order to provide greater certainty and transparency to applicants, thereby facilitating broadband deployment.

111. The FCC's rules require that each filed EA be placed on public notice for a period of 30 days to allow for public input. For most towers for which an EA is submitted, the Commission issues a Finding of No Significant Impact (FONSI) approximately fifteen days after the close of the notice period. The fifteen days allows for timely informal complaints and petitions to deny to reach the reviewing staff and for administrative processing. Delays can occur if an EA is incomplete (*e.g.,* missing permits or other agency approvals), if the underlying application requires perfecting amendments, if an informal complaint or petition to deny is filed in response to the public notice, or if the staff determines additional information is needed in order to meet the Commission's NEPA obligations.

112. Industry commenters argue that NEPA compliance results in significant

delays. Some commenters complain about delays associated with EAs—which T-Mobile states may ''languish for an extended period of time—sometimes years,'' partly because the Commission is not subject to any processing timelines or dispute resolution procedures for EAs. WIA similarly argues that the environmental review process is a significant source of delay for deployment and shot clocks are needed to process EAs and to resolve environmental delays and disputes. On the other hand, American Bird Conservancy, an environmental organization, claims that industry claims are ''unfounded'' and that tower applications move through the FCC system on average within 45 days.

113. The FCC concludes that providing applicants with greater time certainty will benefit both applicants and the public that relies on their services, and will hasten deployment. In particular, for the great majority of cases in which the EA is complete as submitted and will support a FONSI, the FCC directs its staff to complete review and to issue the FONSI within 60 days from placement on notice, either by publication of a public notice or posting on the website (hereafter ''on notice''). The FCC concludes that this time period is reasonable and generally attainable for several reasons. First, staff currently completes review and processing of approximately 75 percent of EAs within 60 days, with most of the remainder completed within 90 days. The FCC is aware of no reason that the 60-day period for review and processing cannot be extended to all EAs that are complete as submitted, in the absence of public objections or substantive concerns. At the same time, the FCC believes a 60-day window is necessary in order to accommodate the 30-day notice period, additional time for timely objections to reach the reviewing staff, and administrative processing. The FCC also notes that 60 days is less than the three-month period that CEQ recommends as an outer boundary for agencies to complete their internal processing of EAs. To the extent current practice is to complete review and processing in less than 60 days, this action is not intended to prolong the review process.

114. Specifically, to accomplish this goal, the FCC directs it staff to review an EA for completion and adequacy to support a FONSI within 20 days from the date it is placed on notice. This review is necessary to determine whether the EA is missing information that is necessary to demonstrate whether the facility would significantly affect the environment for any of the reasons specified in § 1.1307(a) and (b) or that is otherwise required under the Commission's rules. Assuming the EA is complete and would substantively support a FONSI without requiring additional information, staff shall notify the applicant that, barring filing of an informal complaint or petition to deny, the bureau will issue a FONSI within 60 days from placement on notice. This process is in keeping with its obligations under NEPA to review and analyze potential environmental impacts of proposed actions, and to make FONSIs available to the public.

115. If, however, the EA is missing necessary information or if staff determines that it needs to consider additional information to make an informed determination, staff will notify the applicant of the additional information needed within 30 days after the EA is placed on notice. The additional period of up to 10 days beyond the initial 20-day review period will give staff an opportunity to prepare a request for more information. Where the missing information is not of a nature that is likely to affect the public's ability to comment on environmental impacts, then consistent with current practice, the application will not again be placed on notice. In such cases, staff is directed to complete the review and issue a FONSI, if warranted, within 30 days after the missing information is provided or 60 days after the initial notice, whichever is later.

116. Where information is missing that may affect the public's ability to comment on significant environmental impacts, the application will again be placed on notice when that information is received. In addition, Commission staff may identify reasons that a proposal may have a significant environmental impact outside of those the applicant is affirmatively required to consider under the Commission's rules, and in such cases, the applicant's provision of information or amendment of its application to address the concern will ordinarily require additional public notice. Under these circumstances, a new 60-day period for review and processing will begin upon publication of the additional notice.

117. Where an informal complaint or petition to deny is filed against an application containing an EA, the Commission's rules afford the applicant an opportunity to respond and the petitioner or objector an opportunity to reply. In such cases, the staff will endeavor to resolve the contested proceeding within 90 days after the relevant pleading cycle has been completed, or the FCC otherwise has received all information that the FCC has requested from the applicant.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Civil rights, Claims, Communications common carriers, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Income taxes, Indemnity payments, Individuals with disabilities, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television, Wages.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455, unless otherwise noted.

■ 2. Section 1.1307(a)(6) is revised to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a) * * *

(6) Facilities to be located in floodplains, if the facilities will not be placed at least one foot above the base flood elevation of the floodplain.

* * * * *

■ 3. Section 1.1312 is amended by revising paragraph (e) to read as follows:

§ 1.1312 Facilities for which no preconstruction authorization is required.

* * * * *

(e) Paragraphs (a) through (d) of this section shall not apply:

(1) To the construction of mobile stations; or

(2) Where the deployment of facilities meets the following conditions:

(i) The facilities are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d), or the facilities are mounted on structures no more than 10 percent taller than other adjacent structures, or the facilities do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(ii) Each antenna associated with the deployment, excluding the associated equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume;

(iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and

(iv) The facilities do not require antenna structure registration under part 17 of this chapter; and

(v) The facilities are not located on tribal lands, as defined under 36 CFR 800.16(x); and

(vi) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2018–08886 Filed 5–2–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17–264; FCC 18–41]

Obligations Relating to Submission of FCC Form 2100, Schedule G, Used To Report TV Stations' Ancillary or Supplementary Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) revises of its rules to relieve certain digital television stations of an annual reporting obligation relating to the provision of ancillary or supplementary services.

DATES: These rule revisions are effective on May 3, 2018.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at *Raelynn.Remy@fcc.gov,* or (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 18–41, adopted on April 12, 2018. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *https://ecfsapi.fcc.gov/file/041366 7409173/FCC-18-41A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Report and Order (Order), we adopt our proposal to revise § 73.624(g) of the Commission's rules to require only those digital television (DTV) broadcast stations that actually provided feeable ancillary or supplementary services during the relevant reporting period to submit Form 2100, Schedule G to the Commission.[1]

2. Section 336 of the Communications Act of 1934, as amended (Act), authorizes DTV stations to offer ancillary or supplementary services in addition to their free, over-the-air television service.[2] Section 336(e) of the Act directs the Commission to establish a fee program for any such services for which the payment of a subscription fee is required, or for which the licensee receives compensation from a third party in return for transmitting material furnished by that party,[3] otherwise known as ''feeable'' ancillary or supplementary services. Under § 336(e)(4), the Commission must advise Congress annually on ''the amounts collected pursuant to [the fee] program.''

3. To carry out its mandate, the Commission in 1998 adopted rules that: (i) Set the fee for feeable ancillary or supplementary services at five percent of the gross revenues received from the provision of those services; and (ii) require all DTV licensees and permittees annually to file Schedule G, which is used to report information about their use of the DTV bitstream to provide such services. Such stations must submit Schedule G every year even if they provided no ancillary or supplementary services during the relevant reporting period. Failure to file the form ''regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.''

4. In October 2017, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing to modify § 73.624(g)(2) to require only those DTV stations that provide feeable ancillary or supplementary services to submit Schedule G on an annual basis. The following month, the Media Bureau, on its own motion, waived the December 1, 2017 deadline for the filing of Schedule G by DTV stations that received no revenues from such services during the reporting period ending September 30, 2017, pending Commission action on the proposal to eliminate the § 73.264(g)(2) reporting obligation. In response to the NPRM, we received no opposition to the proposed revisions to § 73.624(g).

5. We adopt our proposal to modify § 73.624(g)(2) of the Commission's rules to require only those DTV stations that provide feeable ancillary or supplementary services during the relevant reporting period to submit Schedule G.[4] We find persuasive commenters' unanimous assertions that requiring all DTV stations to file this form, regardless of whether they have provided ancillary or supplementary services or received revenue from those services, imposes unnecessary regulatory burdens and wastes resources. The record has not shown there will be any impact on our ability to discharge our statutory obligations by modifying our rules as proposed. Requiring the submission of Schedule G only by DTV stations that have provided feeable ancillary or supplementary services will continue to provide the Commission with the necessary information to assess and collect the required fees[5] and to fulfill its reporting obligation to Congress.[6] Stations that

[1] 47 CFR 73.624(g)(2); 82 FR 56574. In addition to proposing the rule revisions adopted in this Order, the NPRM (see 82 FR 56574 (Nov. 29, 2017)) also sought comment on possible revisions to § 73.3580 of the Commission's rules concerning public notice of broadcast applications. We will address issues relating to § 73.3580 at a later date.

[2] 47 U.S.C. 336.

[3] Such compensation excludes advertising revenues used to support broadcasting for which a subscription fee is not required.

[4] As proposed in the NPRM, we also revise Schedule G to conform to the rule amendments adopted herein.

[5] For example, requiring DTV stations that have provided feeable ancillary or supplementary services to file Schedule G will allow us to continue to assure that a portion of the value of the public spectrum resource made available for commercial use is recovered for the public benefit and to avoid unjust enrichment of the station.

[6] The Commission fulfills its reporting obligation by providing the required information in the *Video Competition Report,* which identifies the total reported revenues from ancillary or supplementary services and the amount of fees collected by the Commission.

provide feeable ancillary or supplementary services and fail to file the required information will be subject to appropriate sanctions. In addition, as we noted in the NPRM, only a small fraction of all television broadcast stations provide feeable ancillary or supplementary services. Based on a Media Bureau staff review of Schedule G filings, only twelve out of more than 6,000 DTV stations required to file Schedule G received revenues from their provision of ancillary or supplementary services in 2017, and the Commission collected less than $1,300 in fees from those revenues.[7] We thus agree with commenters who assert that the costs of applying § 73.624(g)(2) to all DTV stations outweigh any associated public interest benefits.

6. We therefore affirm our tentative conclusion that such a broad application of the reporting requirement is not necessary to fulfill our statutory requirement to ''report to Congress on the [fee] program . . . and [give the agency] the information necessary to adjust the fee program as appropriate consistent with the use of the spectrum.'' Rather, the form-filing requirement will only continue to apply to DTV stations that actually receive revenue from feeable services. As some parties have noted, waiver of the December 1, 2017 deadline for filing Schedule G spared thousands of DTV stations from expending time and resources to submit such reports, without compromising the Commission's fulfillment of its obligation to report to Congress under section 336. For these reasons, we conclude that eliminating this reporting obligation for DTV stations that have provided no feeable ancillary or supplementary services during the reporting period serves the public interest by reducing unnecessary regulatory burdens.

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM). The Commission sought written public comments on proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

8. In the Order, we amend § 73.624(g)(2) to relieve television broadcasters that have received no feeable revenues from the provision of ancillary or supplementary services, and thus are not required to pay fees on those revenues, of the obligation to submit FCC Form 2100, Schedule G annually. No parties filed comments in response to the IRFA or otherwise addressed the impact on smaller entities of the proposed revisions to § 73.624(g). In addition, the Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file comments in response to the proposed rules in this proceeding.

9. The Order is authorized pursuant to sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336. The types of small entities that may be affected by the Order fall within the following category: Television Broadcasting. The Order adopts no reporting, recordkeeping, or other compliance requirements. The Order eliminates an annual reporting obligation and the expenditure of resources associated with filing the annual reports for a substantial number of broadcast stations, including small entities. Because the revisions to § 73.624(g) adopted in the Order are unopposed, we expect that DTV stations, including affected small entities, will benefit from such revisions.

10. This Order eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 through 3520). In addition, therefore, it does not contain any new or modified ''information burden for small business concerns with fewer than 25 employees'' pursuant to the Small Business Paperwork Relief Act of 2002.

11. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

12. Accordingly, it is ordered that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336, this Report and Order is adopted, effective as of the date of publication of a summary in the **Federal Register**.[8]

13. It is further ordered that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), and 336, the Commission's rules are hereby amended.

14. It is further ordered that the Commission shall send a copy of this Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends part 73 of title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

■ 2. Revise § 73.624(g)(2)(i) and (ii) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(g) * * *

(2) * * *

(i) Each December 1, all commercial and noncommercial DTV licensees and permittees that provided feeable ancillary or supplementary services as defined in this section at any point during the 12–month period ending on the preceding September 30 will electronically report, for the applicable period:

(A) A brief description of the feeable ancillary or supplementary services provided;

(B) Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

(C) The amount of bitstream used to provide feeable ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file information required by this section may result in appropriate sanctions.

(ii) A commercial or noncommercial DTV licensee or permittee that has provided feeable ancillary or supplementary services at any point during a 12–month period ending on September 30 must additionally file the

[7] These totals are based on a review of all Schedule G filings for the 2017 reporting period. The data underlying these totals are publicly available through the Commission's LMS database application search, *https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicAppSearch.html.*

[8] These rule changes serve to ''reliev[e] a restriction.'' 5 U.S.C. 553(d)(1).

FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12–month period and will remit the payment of the required fee.

* * * * *

[FR Doc. 2018–09335 Filed 5–2–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–120; DA 18–410]

Carriage of Digital Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Dismissal of petition for reconsideration.

SUMMARY: This document dismisses the Petition for Reconsideration filed by Paxson Communications Corporation (now known as ION Media Networks, Inc.) (ION). Due to the passage of time, ION has agreed to withdraw its petition. Accordingly, the Media Bureau dismisses the petition without prejudice.

DATES: May 3, 2018.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Order of Dismissal, CS Docket No. 98–120, adopted and released on April 23, 2018. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/*. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Copies of the materials can be obtained from the FCC's Reference Information Center at (202) 418–0270. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to submit a copy of this Memorandum Opinion and Order to the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the Petition for Reconsideration was dismissed.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2018–09413 Filed 5–2–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180110025–8285–02]

RIN 0648–XG202

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; 2018 Closure of the Northern Gulf of Maine Scallop Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Northern Gulf of Maine Scallop Management Area for the remainder of the 2018 fishing year for Limited Access General Category vessels. Vessels subject to this closure may not fish for, possess, or land scallops in or from the Northern Gulf of Maine Scallop Management Area through March 31, 2019. Regulations require this action once NMFS projects that 100 percent of the Limited Access General Category 2018 total allowable catch for the Northern Gulf of Maine Scallop Management Area will be harvested.

DATES: Effective 0001 hr local time, May 2, 2018, through March 31, 2019.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, (978) 282–8456.

SUPPLEMENTARY INFORMATION: The reader can find regulations governing fishing activity in the Northern Gulf of Maine (NGOM) Scallop Management Area in 50 CFR 648.54 and 648.62. These regulations authorize vessels issued a valid federal scallop permit to fish in the NGOM Scallop Management Area under specific conditions, including a total allowable catch (TAC) of 135,000 lb (61,235 kg) for the Limited Access General Category (LAGC) fleet for the 2018 fishing year, and a State Waters Exemption Program for the State of Maine and Commonwealth of Massachusetts. Section 648.62(b)(2) requires the NGOM Scallop Management Area to be closed to scallop vessels issued federal LAGC scallop permits, except as provided below, for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that the LAGC TAC for the fishing year is projected to be harvested. Any vessel that holds a federal NGOM (category LAGC B) or Individual Fishing Quota (IFQ) (LAGC A) permit may continue to fish in the Maine or Massachusetts state waters portion of the NGOM Scallop Management Area under the State Waters Exemption Program found in § 648.54 provided it has a valid Maine or Massachusetts state scallop permit and fishes in that states respective waters only.

Based on trip declarations by federally permitted LAGC scallop vessels fishing in the NGOM Scallop Management Area and analysis of fishing effort, we project that the 2018 LAGC TAC will be harvested as of May 2, 2018. Therefore, in accordance with § 648.62(b)(2), the NGOM Scallop Management Area is closed to all federally permitted LAGC scallop vessels as of May 2, 2018. As of this date, no vessel issued a federal LAGC scallop permit may fish for, possess, or land scallops in or from the NGOM Scallop Management Area after 0001 local time, May 2, 2018, unless the vessel is fishing exclusively in state waters and is participating in an approved state waters exemption program as specified in § 648.54. Any federally permitted LAGC scallop vessel that has declared into the NGOM Scallop Management Area, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area before 0001, May 2, 2018, may complete its trip and land scallops. This closure is in effect until the end of the 2018 scallop fishing year, through March 31, 2019. This closure does not apply to the Limited Access (LA) scallop fleet, which was allocated a separate TAC of 65,000 lb (29, 484 kg) for the 2018 fishing year under Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan. Vessels that are participating in the 2018 scallop Research Set-Aside Program and have been issued letters of authorization to conduct compensation fishing activities will harvest the 2018 LA TAC.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The NGOM Scallop Management Area opened for the 2018 fishing year on April 1, 2018. The regulations at § 648.60(b)(2) require this closure to ensure that federally permitted scallop vessels do not harvest more than the allocated LAGC TAC for the NGOM Scallop Management Area. NMFS can only make projections for the NGOM closure date as trips into the area occur on a real-time basis and as activity trends appear. As a result, NMFS can typically make an accurate projection only shortly before the TAC is harvested. A rapid harvest rate, that has occurred in the last two weeks, makes it more difficult to project a closure well in advance. To allow federally permitted LAGC scallop vessels to continue to take trips in the NGOM Scallop Management Area during the period necessary to publish and receive comments on a proposed rule would result in vessels harvesting more than the 2018 LAGC TAC for the NGOM Scallop Management Area. This would result in excessive fishing effort in the area thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures to make up for the excessive harvest. Also, the public had prior notice and full opportunity to comment on this closure process when we put the NGOM management provisions in place on April 1, 2018 (83 FR 12857). NMFS also finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: April 30, 2018.

Alan D. Risenhoover,

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

[FR Doc. 2018–09377 Filed 4–30–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180411362–8362–01]

RIN 0648–XG168

Fisheries of the Northeastern United States; Monkfish Fishery; 2018 Monkfish Specifications

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

ACTION: Final rule.

SUMMARY: We are implementing specifications for the 2018 monkfish fishery, including total allowable landings limits, trip limits, and day-at-sea limits. This action is necessary to ensure allowable monkfish harvest levels that will prevent overfishing and allow harvesting of optimum yield. This action is intended to establish the allowable 2018 harvest levels, consistent with the Monkfish Fishery Management Plan and previously announced multi-year specifications.

DATES: The final specifications for the 2018 monkfish fishery are effective June 4, 2018, through April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION: The New England and Mid-Atlantic Fishery Management Councils jointly manage the monkfish fishery. The fishery is divided into Northern and Southern Fishery Management Areas and there are different management measures for each area. Primary effort controls include a yearly allocation of days-at-sea (DAS) and landing limits that are designed to enable the fishery to catch, but not exceed, its annual quotas. This action would continue specifications approved by the Councils in Framework Adjustment 10 to the Monkfish Fishery Management Plan, which included specifications for fishing years 2017–2019.

On July 12, 2017, we approved measures in Framework 10 for the 2017 fishing year (82 FR 32145), based on a recent stock assessment update and consistent with the Councils' Scientific and Statistical Committee recommendations. At that time, we also approved the projected specifications for 2018 and 2019. Approved measures for 2018 (Table 1) include total allowable landings (TAL) in both the Northern and Southern Fishery Management Areas, DAS limits, and trip limits. These 2018 measures are the same as 2017. All other requirements remain the same.

TABLE 1—MONKFISH SPECIFICATIONS FOR FISHING YEAR 2018

Management area	TAL	DAS maximum	Incidental limit on a groundfish DAS	Possession limit when on a monkfish DAS
Northern Area	6,338	.....	Category C: 900lb tail weight per DAS. Category D: 750lb tail weight per DAS.	
Southern Area	9,011	37	.....	Category A/C: 700 lb tail weight per DAS. Category B/D: 575 lb tail weight per DAS.

We have reviewed available 2017 fishery information against the 2018 specifications. While we have exceeded the Northern Area total allowable landings, we do not expect that the annual catch limit will be exceeded. Further, there is no new biological information that would require altering the projected 2018 specifications. Neither Council has recommended any changes to the previous multi-year specifications. Based on this, we are implementing the 2018 specifications as outlined in the Framework 10 final rule (82 FR 32145, July 12, 2017). The 2018 specifications will be effective until April 30, 2019. We will finalize the 2019 fishing year specifications prior to May 1, 2019, by publishing another final rule.

The 2018 fishing year starts on May 1, 2018. The fishery management plan allows for the previous year's specifications to remain in place until

replaced by a subsequent specifications action (rollover provision). As a result, the 2017 specifications remain in effect until replaced by the 2018 specifications included in this rule.

We will publish notice in the **Federal Register** of any revisions to these specifications if an overage occurs in 2018 that would require adjusting the 2019 projected specifications. We will provide notice of the final 2019 specifications prior to the May 1, 2019, start of the fishing year.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Monkfish Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This rule is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), we find good cause to waive prior public notice and opportunity for public comment on the catch limit and allocation adjustments because allowing time for notice and comment is unnecessary. The Framework 10 proposed rule provided the public with the opportunity to comment on the 2017–2019 specifications (82 FR 21498, May 9, 2017). While comments in the Framework 10 final rule were mixed on whether limits should be liberalized or made more restrictive, no comments were received on the announced 2018 specifications. Thus, the proposed and final rules that contained the projected 2017–2019 specifications provided a full opportunity for the public to comment on the substance and process of this action. Furthermore, no circumstances or conditions have changed in the 2017 monkfish fishery that would cause new concern or necessitate reopening the comment period. Finally, the final 2018 specifications being implemented by this rule are unchanged from those projected in the Framework 10 final rule.

The Chief Counsel for Regulation, Department of Commerce, previously certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that the 2017–2019 monkfish specifications would not have a significant economic impact on a substantial number of small entities. Implementing status quo specifications for 2018 will not change the conclusions drawn in that previous certification to the SBA. Because advance notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* do not apply to this rule. Therefore, no new regulatory flexibility analysis is required and none has been prepared.

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

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

Dated: April 27, 2018.

Samuel D. Rauch, III,

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

[FR Doc. 2018–09368 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 86
Thursday, May 3, 2018

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

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2017–0214]

Review of Administrative Rules

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is initiating a retrospective review of administrative requirements to identify outdated or duplicative administrative requirements that may be eliminated without an adverse effect on public health or safety, common defense and security, protection of the environment, or regulatory efficiency and effectiveness. The NRC is providing an outline of its strategy and is seeking public comment on the criteria that the NRC proposes to use to identify administrative regulations for possible elimination. This retrospective review of administrative regulations will complement the NRC's existing strategy for retrospective analysis of existing regulations.

DATES: Submit comments by July 2, 2018. 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 before this date. The NRC will not prepare written responses to each individual comment, due to the NRC's schedule for completing the retrospective review of administrative regulations.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0214. Address questions about NRC dockets to Ms. Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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

FOR FURTHER INFORMATION CONTACT: Ms. Margaret S. Ellenson, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–0894; email: *Margaret.Ellenson@nrc.gov;* or Mr. Andrew Carrera, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–1078; email: *Andrew.Carrera@nrc.gov;* both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0214 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0214.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0214 in your comment submission.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

On August 11, 2017, the NRC announced that the agency is initiating, beginning in the fall of the calendar year 2017, a retrospective review of its administrative regulations to identify those rules that are outdated or duplicative. Once identified, the regulations will be evaluated to determine whether they can be eliminated without impacting the agency's mission. The retrospective review supports the NRC's ongoing regulatory planning and retrospective analysis of existing regulations (ADAMS Accession No. ML14002A441).

The Retrospective Review of Administrative Regulations Strategy

On November 22, 2017, the NRC staff issued SECY–17–0119, ''Retrospective

Review of Administrative Regulations'' (ADAMS Accession No. ML17286A069), which provided for Commission approval the NRC staff's proposed strategy for the retrospective review of regulations. The staff requirements memorandum associated with SECY–17–0119 approved the NRC staff's proposal and directed staff to implement the strategy. Overall, the goal of the retrospective review is to enhance the management and administration of regulatory activities and to ensure that the agency's regulations remain current and effective. The review is intended to identify regulatory changes that are administrative in nature that will make the information submittal, record keeping, and reporting processes more efficient for the staff, applicants, and licensees. The strategy takes into consideration the agency's overall statutory responsibilities, including mandates to issue new regulations, the number of regulations in chapter I of title 10 of the *Code of Federal Regulations,* and available resources. This effort will not impact the NRC's mission, as it will be limited to identifying outdated or duplicative, non-substantive administrative regulations.

III. Discussion

This notice provides an outline of the NRC's approved strategy for the retrospective review (see Table 1) and requests public comment on the criteria the NRC proposes to use to evaluate potential changes to the requirements. In summary, the retrospective review strategy involves seven steps—(1) developing criteria to evaluate potential regulatory changes to administrative requirements; (2) gathering NRC staff input on administrative regulations that might fit the proposed criteria; (3) reviewing historical correspondence documents submitted to the NRC related to eliminating duplicative or outdated administrative regulations; (4) including opportunities for public comment; (5) interacting with the public throughout the review process by conducting public meetings; (6) reviewing stakeholder input; and (7) developing rules or rulemaking plans to eliminate or modify administrative requirements, as appropriate.

TABLE 1—RETROSPECTIVE REVIEW ACTIVITY DESCRIPTION AND TIMELINE

Action	Description	Approximate completion timeframe
Step 1: Develop Evaluation Criteria.	Develop criteria to ensure administrative regulations are evaluated in a consistent manner. The criteria will be used as guides to determine whether the administrative requirement is duplicative or outdated and if the requirement(s) should be considered for potential elimination or modification. The criteria are being disseminated to external stakeholders for comment via this notice and will be discussed in a public meeting.	Finalize criteria after close of public comment period for this notice and after final review and approval by the Commission.
Step 2: Gather NRC Staff Input.	Provide an email address or other mechanism for NRC staff to provide input on administrative requirements that may be outdated or duplicative and that the Commission should consider for elimination or modification.	Concurrently with request for public input as outlined in Steps 1 and 4.
Step 3: Historical Correspondence Review.	Review relevant historical letters received from members of the public, other Federal agencies, State and local governments, Federally-recognized Tribes, non-governmental organizations, and representative industry groups related to eliminating duplicative or outdated administrative regulations.	Beginning concurrent with Step 4.
Step 4: Request for Public Input on Outdated or Duplicative Administrative Requirements.	Request public input to identify administrative requirements that may be outdated or duplicative and that the Commission should consider for elimination or modification. The comment period will be open for a period of approximately 60 days.	Within 4 months after the public comment period closes for this notice.
Step 5: Conduct Public Meetings.	Schedule public meetings (in-person, webinar, and teleconference-capable) during the comment periods to provide awareness and answer questions to clarify the purpose and scope of the activity. Although verbal comments will not be accepted during the meetings, staff will provide instruction on how attendees can submit written comments.	Meetings will be held during the public comment period for this notice and during the public comment period for the second notice (Step 4).
Step 6: Review Input	Compile and analyze the input and assign to the regulation ''owner'' for the assigned office to review each proposal to determine if it has merit.	Initial review and assignment of the input will be targeted for after completion of the public meetings (Step 5). Recommendations (i.e., no action or accept for regulatory change) should be submitted to the Commission for its review and approval within 18 months after initiation of the activities.
Step 7: Develop Rulemaking Activities to Eliminate or Modify Requirements.	For any administrative requirements that have been identified for elimination or modification, the potential outcomes could include: • A consolidated administrative rulemaking; ..... • Inclusion into an existing planned rulemaking; or ..... • A stand-alone specific rulemaking	The schedule for any rulemaking activities will be determined using the budget and rulemaking prioritization methodologies. Rulemaking plans will be submitted to the Commission for its review and approval.

Public input will be critical to identifying potential changes to administrative requirements as well as to provide data on the benefits and costs of existing NRC administrative regulations. The NRC will conduct two public meetings to discuss the retrospective review process and recommendations. In addition, the NRC will seek input from the NRC's existing committees (the Committee to Review Generic Requirements, Advisory Committee on Reactor Safeguards, and the Advisory Committee on the Medical Uses of Isotopes), other Federal agencies, State and local governments, Federally-recognized Tribes, and non-governmental organizations. All input that the NRC receives will be used to inform the retrospective review recommendations.

For the purpose of this review, administrative regulations are those that impose recordkeeping or reporting requirements or address areas of agency organization, procedure, or practice. Consistent with Step 1 of the strategy, the NRC developed the draft criteria and goals listed below to evaluate potential regulatory changes of this nature. The evaluation criteria would serve as factors of consideration to guide the staff's decisionmaking. The staff is not proposing to use the criteria to make stand-alone determinations. Instead, the criteria will be weighed against other activities outlined in the strategy, such as staff programmatic experience and, comments received, and the correspondence review. Draft criteria 1–3 are intended to ''screen-in'' regulations for inquiry for potential elimination or modification, as they address whether a regulation is outdated or duplicative. These screening-in criteria are not intended to be mutually exclusive. A given regulation may satisfy one or more of the criteria. Draft criterion 4 is intended to ''screen-out'' regulations from further inquiry or for potential elimination or modification so as to avoid unintended consequences. Specific points about which the NRC seeks public comment are described in the Section IV, ''Specific Questions,'' of this document.

Draft Criteria for Selecting Changes to Administrative Requirements

1. Routine and periodic recordkeeping and reporting requirements, such as directives to submit recurring reports, which the NRC has not consulted or referenced in programmatic operations or policy development in the last 3 years.

The goal of this criterion is to identify outdated requirements for information collection.

2. Reports or records that contain information reasonably accessible to the agency from alternative resources or routine reporting requirements where less frequent reporting would meet programmatic needs.

The goal of this criterion is to identify duplicative information or overused collection requirements.

3. Recordkeeping and reporting requirements that result in significant burden. For example, more than $100,000 overall per potential regulatory change; or over 1,000 reporting hours for each affected individual or entity over a 3-year period; or 10 hours for each affected individual or entity each calendar year or per application.

The goal of this criterion is to ensure that elimination or modification of outdated or duplicative recordkeeping and reporting requirements could result in appreciable reductions in burden for the NRC, licensees, or both. The criterion is not intended to be used as a stand-alone consideration, but rather as a tool to ensure that the retrospective review is focused on efforts that will in fact result in a reduction in burden.

4. Reports or records that contain information used by other Federal agencies, State and local governments, or Federally-recognized Tribes will be eliminated from the review.

The goal of this criterion is to decrease the potential for unintended consequences. For example, the NRC collects certain information on behalf of other government agencies. It is not the intent of this effort to change that practice.

IV. Specific Questions

The NRC is providing an opportunity for the public to submit information and comments on the criteria that the NRC proposes to use to identify administrative requirements for potential modification or elimination. You may suggest other criteria; please provide supporting rationale for any alternative criteria you recommend that the NRC use in conducting its review. The NRC is particularly interested in gathering input in the following areas:

1. Do the proposed evaluation criteria serve the purposes described in this notice? Why or why not?

2. The NRC is considering whether the burden reduction minimum is appropriate. Is ''significant burden'' the appropriate measure? Are the examples given for Criterion 3 appropriate or useful? Should the NRC use different bases for measuring ''significant burden,'' and if so, what are these measures and how would they result in a more accurate or complete measurement of burden?

3. The NRC is considering multiple thresholds for different classes of regulated entities, as a single threshold might not be useful to identify burden reductions for all licensee types. What is the appropriate threshold for your entity class (*e.g.,* operating reactor, industrial radiographer, fuel cycle facility)?

4. Are there other evaluation criteria the NRC should consider using in its retrospective review of administrative regulations? What are those criteria and why?

V. Public Meetings

Public input will be critical to identifying potential regulatory changes as well as to provide data on the benefits and costs of existing NRC regulations. The NRC will conduct two public meetings to discuss the Retrospective Review process and recommendations.

The NRC will publish a notice of the location, time, and agenda of any meetings in the **Federal Register**, on *www.Regulations.gov,* and on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *http://www.nrc.gov/public-involve/public-meetings/index.cfm*.

Dated at Rockville, Maryland, this 27th day of April, 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2018–09359 Filed 5–2–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0361; Product Identifier 2017–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318, A319, and A320 series airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. This proposed AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate the specified maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 18, 2018.

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

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

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0361; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0361; Product Identifier 2017–NM–160–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017–0215, dated October 24, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318, A319, and A320 series airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The MCAI states:

> The airworthiness limitations for Airbus A320 family aeroplanes, which are approved by EASA, are currently defined and published in the A318, A319, A320 and A321 Airworthiness Limitations Section (ALS) document(s). The Safe Life Airworthiness Limitation Items are specified in ALS Part 1. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2012–0008 [which corresponds to FAA AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015) (''AD 2015–05–02'')] to require the implementation of the airworthiness limitations as specified in Airbus A318/A319/A320/A321 ALS Part 1 Revision 02, and EASA AD 2014–0141 [which corresponds to FAA AD 2015–22–08, Amendment 39–18313 (80 FR 68434, November 5, 2015) (''AD 2015–22–08'')] to require the implementation of specific life limits for the main landing gear (MLG) upper cardan pin Part Number (P/N) 201163620.
>
> Since those ADs were issued, studies were conducted in the frame of in-service events or during life extension campaigns, the results of which prompted revision of the life limits of several components installed on A320 family aeroplanes. Consequently, Airbus successively issued Revision 03, Revision 04 and Revision 05 of the A318/A319/A320/A321 ALS Part 1. ALS Part 1 Revision 05 also includes the life limits required by EASA AD 2014–0141. A318/A319//A321 ALS Part 1 Revision 05 issue 02 was issued to provide clarifications.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0008 and EASA AD 2014–0141, which are superseded, and requires accomplishment of the actions specified in A318/A319/A320/A321 ALS Part 1 Revision 05.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0361.

Relationship of Proposed AD to AD 2015–05–02 and AD 2015–22–08

This NPRM would not supersede AD 2015–05–02 or AD 2015–22–08. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program to incorporate the new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all requirements of AD 2015–05–02 and AD 2015–22–08.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 05, Issue 02, dated April 19, 2017. This service information describes new maintenance requirements and airworthiness limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

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

Differences Between This Proposed AD and the MCAI or Service Information

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

Airworthiness Limitations Based on Type Design

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

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

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

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

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

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

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD. This proposed AD therefore would apply to Airbus Model A318, A319, and A320 series airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of approval of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Costs of Compliance

We estimate that this proposed AD affects 1,250 airplanes of U.S. registry.

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

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2018–0361; Product Identifier 2017–NM–160–AD.

(a) Comments Due Date

We must receive comments by June 18, 2018.

(b) Affected ADs

This AD affects AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015) (''AD 2015–05–02'') and AD 2015–22–08, Amendment 39–18313 (80 FR 68434, November 5, 2015) (''AD 2015–22–08'').

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before April 19, 2017.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 05, Issue 02, dated April 19, 2017. The initial compliance times for new or revised tasks are at the applicable times specified in Airbus A318/A319/A320/A321 ALS Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 05, Issue 02, dated April 19, 2017, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions and Intervals

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

(i) Terminating Action for AD 2015–05–02 and AD 2015–22–08

Accomplishing the actions required by this AD terminates all requirements of AD 2015–05–02 and AD 2015–22–08.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0215, dated October 24, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0361.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3223.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on April 20, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–09070 Filed 5–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0127; Airspace Docket No. 18–AAL–7]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Gustavus, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Gustavus Airport, Gustavus, AK. Airspace redesign is necessary as the FAA transitions from ground-based to satellite-based navigation for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before June 18, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2018–0127; Airspace Docket No. 18–AAL–7, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov*.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

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

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547; telephone (206) 231–2253.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Gustavus Airport, Gustavus, AK, to accommodate airspace redesign in support of IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2018–0127; Airspace Docket No. 18–AAL–7) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for address and phone number).

Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2018–0127; Airspace Docket No. 18–AAL–7.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th St., Des Moines, WA 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Gustavus Airport, Gustavus, AK. The airspace would be redesigned to a polygon approximately 12 miles wide extending to approximately 7 miles northwest and 31 miles southeast of the airport (from 4 miles each side of the 229° bearing of the airport extending from the 6.8-mile radius to 16.7 miles southwest of the airport, and within 3 miles northeast and 7 miles southwest of the airport 135° bearing extending from the 6.8-mile radius to 24 miles southeast of the airport). This airspace redesign is necessary for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B,

Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

* * * * *

AAL AK E5 Gustavus, AK [Amended]

Gustavus Airport, AK
(Lat. 58°25′31″ N, long. 135°42′27″ W)

That airspace upward from 700 feet above the surface within the area bounded by a line beginning at lat. 58°32′19″ N, long. 135°44′54″ W, to lat. 58°11′58″ N, long. 135°02′11″ W, to lat. 58°10′08″ N, long. 135°05′18″ W, to lat. 58°03′38″ N, long. 134°57′10″ W, to lat. 57°59′34″ N, long. 135°10′49″ W, to lat. 57°59′40″ N, long. 135°25′05″ W, to lat. 58°08′36″ N, long. 135°26′55″ W, to lat. 58°25′37″ N, long. 136°00′20″ W, thence to the point of beginning.

Issued in Seattle, Washington, on April 23, 2018.

B.G. Chew,

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

[FR Doc. 2018–09103 Filed 5–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0754; Airspace Docket No. 17–ASO–16]

RIN 2120–AA66

Proposed Amendment of Class E Airspace, Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Memphis International Airport, Memphis, TN. Airspace reconfiguration is necessary due to the decommissioning of the Elvis non-directional radio beacon (NDB), and for the safety and management of instrument flight rules (IFR) operations at this airport. Olive Branch Airport, Olive Branch, MS, would be removed from the airspace description to be reestablished in a separate rulemaking.

DATES: Comments must be received on or before June 18, 2018.

ADDRESSES: Send comments on this proposal to: U. S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Rm. W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2017–0754; Airspace Docket No. 17–ASO–16, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1700 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Memphis International Airport, Memphis, TN to support IFR operations at the airport.

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0754; Airspace Docket No. 17–ASO–16.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet or more above the surface within an 8-mile radius of Memphis International Airport, Memphis, TN. The segment extending from the 8-mile radius of the airport to 16 miles west of the Elvis NDB would be removed due to the decommissioning of the Elvis NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

Also, this action would remove the language that excludes the Millington, TN, airspace area to comply with FAA Order 7400.2L, Procedures for Handling Airspace Matters.

Additionally, the airspace listed in the legal description for Olive Branch Airport, Olive Branch, MS, would be removed and redesignated in a separate rulemaking.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

* * * * *

ASO TN E5 Memphis, TN [Amended]

Memphis International Airport, TN
(Lat. 35°02′33″ N, long. 89°58′36″ W)
General DeWitt Spain Airport
(Lat. 35°12′03″ N, long. 90°03′14″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within a 6.4-mile radius of General DeWitt Spain Airport.

Issued in College Park, Georgia, on April 24, 2018.

Geoff Lelliott,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–09091 Filed 5–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0866; Airspace Docket No. 17–ASO–20]

RIN 2120–AA66

Proposed Amendment of Class D Airspace, Removal of Class E Airspace, and Establishment of Class E Airspace; Olive Branch, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, remove Class E airspace designated as an extension, and establish Class E airspace extending upward from 700 feet or more above the surface at Olive Branch Airport, Olive Branch, MS. The Olive Branch non-directional radio beacon (NDB) has been decommissioned, requiring the redesign of the airspace. This proposal would replace the outdated term Airport/Facility Directory with the term Chart Supplement in the Class D legal description.

DATES: Comments must be received on or before June 18, 2018.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Rm W12–140, Washington, DC 20590; telephone: 202–366–9826. You must identify the Docket No. FAA–2017–0866; Airspace Docket No. 17–ASO–20, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA

Order 7400.11B at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1700 Columbia Avenue, College Park, GA 30337; telephone 404 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D airspace, remove Class E airspace, and establish Class E airspace at Olive Branch Airport, Olive Branch, MS, to support IFR operations at the airport.

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–0866; Airspace Docket No. 17–ASO–20.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace to a 4.1-mile radius, (from a 4-mile radius) at Olive Branch Airport, Olive Branch, MS, and removing Class E airspace designated as an extension to Class D, due to the decommissioning of the Olive Branch NDB and cancellation of the NDB approach. Also, this action proposes to establish Class E airspace extending upward from 700 feet or more above the surface at Olive Branch Airport, Olive Branch, MS, (this airspace was removed from the Memphis, TN, airspace in a separate rulemaking.

Additionally, this action would make an editorial change to the Class D airspace legal description replacing Airport/Facility Directory with the term Chart Supplement.

Class D and Class E airspace designations are published in paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Olive Branch, MS [Amended]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.1-mile radius of Olive Branch Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO MS E4 Olive Branch, MS [Removed]

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

* * * * *

ASO MS E5 Olive Branch, MS [New]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Olive Branch Airport.

Issued in College Park, Georgia, on April 24, 2018.

Geoff Lelliott,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–09092 Filed 5–2–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–1214; Airspace Docket No. 17–ASO–24]

RIN 2120–AA66

Proposed Amendment of Class E Airspace, Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E surface airspace at Knoxville Downtown Island Airport, Knoxville, TN, by adding to the airspace description the exclusion of a 1-mile radius around University of Tennessee Medical Center Heliport, to allow helicopters departing from the heliport to no longer require a clearance. Also, the BENFI non-directional beacon (NDB) has been decommissioned, requiring redesign of Class E airspace extending upward from 700 feet above the surface at McGhee–Tyson Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at these airports. This action also would update the geographic coordinates of Knoxville Downtown Island Airport, McGhee Tyson Airport, and Gatlinburg-Pigeon Forge Airport in the associated Class E airspace areas to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 18, 2018.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg Ground Floor, Rm W12–140, Washington, DC 20590; telephone: 1–(800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2017–1214; Airspace Docket No. 17–ASO–24, at the beginning of your comments. You may also submit and review received comments through the internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1700 Columbus Avenue, College Park, Georgia 30337, telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2017–1214; Airspace Docket No. 17–ASO–24.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive

public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E surface airspace within a 4.5-mile radius of Knoxville Downtown Island Airport, Knoxville, TN, to exclude a 1.0-mile radius around University of Tennessee Medical Center Heliport. The University of Tennessee Medical Center Heliport requires this 1.0- mile cutout below 700 feet from the surface to allow helicopters to depart the heliport without an IFR clearance.

Also, the BENFI NDB has been decommissioned, requiring airspace reconfiguration of Class E airspace extending upward from 700 feet or more above the surface at McGhee Tyson Airport, Knoxville, TN.

Additionally, the geographic coordinates of the Knoxville Downtown Island Airport, McGhee Tyson Airport, and Gatlinburg-Pigeon Forge Airport would be adjusted to coincide with the FAA's aeronautical database.

Class E airspace designations are published in Paragraphs 6002 and 6005, respectively, of FAA Order 7400.11B, dated August 3, 201B, and effective September 15, 201B, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 6002 Class E Surface Area Airspace

* * * * *

ASO TN E2 Knoxville, TN [Amended]

Knoxville Downtown Island Airport, TN
(Lat. 35°57′50″ N, long. 83°52′25″ W)
University of Tennessee Medical Center Heliport, TN
(Lat. 35°56′30″ N, long. 83°56′38″ W)

Within a 4.5-mile radius of Knoxville Downtown Island Airport, excluding that airspace within a 1.0-mile radius of University of Tennessee Medical Center Heliport.

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

* * * * *

ASO TN E5 Knoxville, TN [Amended]

McGhee-Tyson Airport, TN
(Lat. 35°48′34″ N, long. 83°59′43″ W)
Gatlinburg-Pigeon Forge Airport, TN
(Lat. 35°51′28″ N, long. 83°31′43″ W)
Knoxville Downtown Island Airport, TN
(Lat. 35°57′50″ N, long. 83°52′25″ W)
Monroe County Airport, Madisonville, TN,
(Lat. 35°32′43″ N, long. 84°22′49″ W)

That airspace extending upward from 700 feet above the surface within a 15.4-mile radius of McGhee-Tyson Airport, and within a 13-mile radius of Gatlinburg-Pigeon Forge Airport, and from the 080° bearing from Gatlinburg-Pigeon Forge Airport clockwise to the 210° bearing extending from the 13-mile radius southeast to the 33-mile radius centered on Gatlinburg-Pigeon Forge Airport, and within an 8-mile radius of Knoxville Downtown Island Airport and within a 6.5-mile radius of Monroe County Airport, Madisonville, TN.

Issued in College Park, Georgia, on April 24, 2018.

Geoff Lelliot,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–09089 Filed 5–2–18; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0423; FRL–9977–34–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Base Year Emissions Inventories for the Lebanon and Delaware County Nonattainment Areas for the 2012 Annual Fine Particulate Matter National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions pertain to base year emission inventories for the Lebanon County and Delaware County nonattainment areas for the 2012 annual fine particulate national ambient air quality standard (NAAQS). The Clean Air Act (CAA) requires states to submit a comprehensive, accurate and current inventory of actual emissions from all sources of direct and secondary ambient fine particulate matter less than 2.5 microns in diameter ($PM_{2.5}$) for all $PM_{2.5}$ nonattainment areas. This action is being taken under Title I of the CAA.

DATES: Written comments must be received on or before June 4, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0423 at *http://www.regulations.gov,* or via email to *spielberger.susan@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: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Ambient or outdoor air can contain a variety of pollutants, including particulate matter (PM). Airborne PM can be comprised of either solid or liquid particles, or a complex mixture of particles in both solid and liquid form. The most common airborne PM constituents include sulfate (SO4); nitrate (NO3); ammonium; elemental carbon; organic mass; and inorganic material, referred to as ''crustal'' material, which can include metals, dust, soil and other trace elements. $PM_{2.5}$ includes ''primary'' particles, which are directly emitted into the air by a variety of sources, and ''secondary'' particles, that are formed in the atmosphere as a result of reactions between precursor pollutants (*e.g.,* SO4 and NO3 from emissions of mobile and stationary sources of oxides of nitrogen and sulfur dioxide combining with ammonia).

The human health effects associated with long- or short-term exposure to $PM_{2.5}$ are significant and include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits) and development of chronic respiratory disease. Welfare effects associated with elevated $PM_{2.5}$ levels include visibility impairment, effects on sensitive ecosystems, materials damage and soiling, and climatic and radiative processes.

On December 14, 2012, EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS to provide increased protection of public health from fine particle pollution (the 2012 annual $PM_{2.5}$ NAAQS). 78 FR 3086 (January 15, 2013). In that action, EPA strengthened the primary annual $PM_{2.5}$ standard, lowering the level from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 mg/m3. The 2012 annual $PM_{2.5}$ NAAQS is attained when the 3-year average of the annual arithmetic mean monitored values does not exceed 12.0 mg/m3. *See* 40 CFR 50.18.

On January 15, 2015 (80 FR 2206), EPA published area designations, as required by CAA section 107(d)(1), for the 2012 annual $PM_{2.5}$ NAAQS. Through that designations action, EPA identified as ''nonattainment'' those areas that were then violating the 2012 annual $PM_{2.5}$ NAAQS based on quality-assured, certified air quality monitoring data from 2011 to 2013 and those areas that contributed to a violation of the NAAQS in a nearby area. In that action, EPA designated the Delaware County and Lebanon County nonattainment areas as moderate nonattainment for the 2012 annual $PM_{2.5}$ NAAQS, effective April 15, 2015. *See* 40 CFR 81.339. Pennsylvania's Delaware County and the Lebanon County nonattainment areas are each comprised of a single county. Under section 172(c)(3) of the CAA, Pennsylvania is required to submit a comprehensive, accurate, and current inventory of actual emissions from all sources (point, nonpoint, nonroad, and onroad) of the relevant pollutants, in each nonattainment area. EPA's ''Provisions for Implementation of the $PM_{2.5}$ NAAQS'' (or PM implementation rule), at 40 CFR part 51, subpart Z, sets criteria for which pollutants are to be included by states in the required base year emission inventory. This inventory must include direct $PM_{2.5}$ emissions, separately reported $PM_{2.5}$ filterable and condensable emissions, and emissions of the $PM_{2.5}$ precursors. 40 CFR 51.1008.

II. Summary of SIP Revision and EPA Analysis

On May 5, 2017, the Pennsylvania Department of Environmental Protection (PADEP) submitted a formal SIP revision consisting of the 2011 base year emissions inventory for the Delaware County nonattainment area for the 2012 annual $PM_{2.5}$ NAAQS. On September 25, 2017, PADEP submitted a formal revision consisting of the 2011 base year emission inventory for the Lebanon County nonattainment area for the 2012 annual $PM_{2.5}$ NAAQS.

PADEP selected 2011 as its base year for SIP planning purposes, per EPA's PM implementation rule, at 40 CFR 51.1008(a)(1)(i), which requires that the base year inventory year shall be one of the 3 years for which monitored data were used for designations or another technically appropriate inventory year if justified by the state in the plan submission. EPA's nonattainment designations for the 2012 annual $PM_{2.5}$ NAAQS were made for both the Delaware County and Lebanon County nonattainment areas based on monitoring data from 2011–2013 and thus included 2011. Furthermore, 2011 was the most recent and complete inventory for which emissions could be

derived from the 2011 National Emission Inventory Version 2 (NEI v2). PADEP's 2011 base year inventories for both areas include emissions estimates covering the stationary point, area (nonpoint), nonroad mobile, onroad mobile, and source categories.

EPA's $PM_{2.5}$ implementation rule requires the base year emissions inventory to include direct $PM_{2.5}$ emissions, as well as separately reported $PM_{2.5}$ filterable and condensable emissions, and emissions of the scientific $PM_{2.5}$ precursors. 40 CFR 51.1008(a)(1)(iv). In its 2011 base year inventory SIP submittals for the Delaware and Lebanon County nonattainment areas, PADEP reported actual annual emissions of directly-emitted $PM_{2.5}$ emissions ($PM_{2.5}$ PRI), as well as separately reported $PM_{2.5}$ filterable and condensable particulate matter (PM CON) emissions. PM CON is matter that exists as a vapor at stack conditions, but becomes a solid or liquid once it exits the stack and is cooled by ambient air. PADEP's base year inventories for these areas also include directly-emitted, primary particulate matter less than 10 microns in diameter (PM_{10} PRI), emissions precursors that contribute to secondary formation of $PM_{2.5}$, including sulfur dioxides (SO_2), nitrogen oxides (NO_X), volatile organic compounds (VOC), and ammonia (NH3) emissions.

Table 1 summarizes the 2011 emission inventory by source sector for each pollutant or pollutant precursor for the Delaware County 2012 annual $PM_{2.5}$ nonattainment area, expressed as annual emissions in tons per year (tpy).

TABLE 1—SUMMARY OF 2011 EMISSIONS OF $PM_{2.5}$, PM_{10}, AND $PM_{2.5}$ PRECURSORS FOR THE DELAWARE COUNTY 2012 ANNUAL $PM_{2.5}$ NAAQS NONATTAINMENT AREA

Source sector	Annual emissions (tpy)					
	PM_{10} Primary [1]	$PM_{2.5}$ Primary [2]	SO_2	NO_X	VOC	NH3
Stationary Point Sources [3]	1,671.81	1,496.70	4,975.94	7,641.98	1,393.18	217.50
Area Sources [4]	2,502.73	998.82	2,055.13	2,875.85	6,779.07	206.47
Onroad Mobile Sources [5]	328.61	179.01	31.05	5,643.30	2,999.73	130.41
Nonroad Mobile Sources	128.87	121.78	3.498	1,123.96	1,787.97	1.759
Total Emissions	4,632.02	2,796.30	7,065.62	17,285.08	12,959.95	556.14

[1] Primary PM particles are emitted directly to the air from a source and include both filterable particulate and condensable components. Condensable PM (PM CON) exists as a vapor at stack conditions but exists as a solid or liquid once it exits the stack and is cooled by ambient air. All PM CON is smaller than 2.5 microns in diameter and, therefore, represents condensable matter for both PM_{10} and $PM_{2.5}$. PM_{10} Primary is the sum of filterable PM_{10} (PM_{10} FIL) and PM CON.

[2] $PM_{2.5}$ Primary is the sum of filterable $PM_{2.5}$ and PM CON.

[3] The PM_{10} Primary value for stationary point sources includes a condensable component of 656.39 tpy. Because PM_{10} includes $PM_{2.5}$ by definition, the $PM_{2.5}$ Primary value for stationary point sources includes the same condensable component of 656.39 tpy.

[4] PM_{io} Primary includes PM_{10} FIL and PM CON. $PM_{2.5}$ Primary includes $PM_{2.5}$ FIL and PM CON. Condensable emissions for the area source sector are a subset of PM Primary emissions, or 164.93 tpy.

[5] Condensable emissions for the onroad and nonroad sectors are not separately calculated by the MOVES model, and are therefore included within the PM_{10} Primary and $PM_{2.5}$ Primary values of this table.

Table 2 summarizes the 2011 emission inventory by source sector for each pollutant or pollutant precursor for the Lebanon County 2012 annual $PM_{2.5}$ nonattainment area, expressed as annual emissions in tons per year.

TABLE 2—SUMMARY OF 2011 EMISSIONS OF $PM_{2.5}$, PM_{10}, AND $PM_{2.5}$ PRECURSORS FOR THE LEBANON COUNTY 2012 ANNUAL $PM_{2.5}$ NAAQS NONATTAINMENT AREA

Source sector	Annual emissions (tpy)					
	PM_{10} Primary [1]	$PM_{2.5}$ Primary [2]	SO_2	NO_X	VOC	NH3
Stationary Point Sources [3]	136.64	80.68	278.53	690.30	182.37	17.44
Area Sources [4]	4,462.63	1,287.21	373.62	869.09	5,924.16	3,843.03
Onroad Mobile Sources [5]	140.23	92.50	11.21	2,937.04	1,331.72	49.15
Nonroad Mobile Sources	64.48	61.55	1.684	615.91	668.43	0.751
Total Emissions	4,803.98	1,521.94	665.05	5,112.33	8,106.69	3,910.37

[1] Primary PM particles are emitted directly to the air from a source and include both filterable particulate and condensable components. PM_{10} Primary is the sum of filterable PM_{10} FIL and PM CON.

[2] $PM_{2.5}$ Primary is the sum of filterable $PM_{2.5}$ and PM CON.

[3] The PM_{10} Primary value for stationary point sources includes a condensable component of 48.04 tpy. Because PM_{10} includes $PM_{2.5}$ by definition, the $PM_{2.5}$ Primary value for stationary point sources includes the same condensable component of 48.04 tpy.

[4] PM_{10} Primary includes PM_{10} FIL and PM CON. $PM_{2.5}$ Primary includes $PM_{2.5}$ FIL and PM CON. Condensable emissions for the area source sector are a subset of PM Primary emissions, or 38.88 tpy.

[5] Condensable emissions for the onroad and nonroad sectors are not separately calculated by the MOVES model, and are therefore included within the PM_{10} Primary and $PM_{2.5}$ Primary values of this table.

Stationary point sources are large, stationary, and identifiable sources of emissions that release pollutants into the atmosphere. PADEP extracted data for $PM_{2.5}$ source emissions from the 2011 NEI v2, which receives input from each state's annual inventory estimates. For the Delaware County nonattainment area, major sources of $PM_{2.5}$ emissions and precursors have historically been refineries, electric power plants, and pulp and paper mills. For the Lebanon

County nonattainment area, the major sources include an electric power plant and a mineral processing facility.

Area sources are stationary, nonpoint sources that are too small and numerous to be inventoried individually. Area sources are inventoried at the county level and aggregated with like categories. Area sources are typically estimated by multiplying an emission factor by some collective activity for each source category, such as population or employment data. PADEP accounted for control efficiency, rule effectiveness, and rule penetration in its area source calculations, where possible. PADEP's SIP submittals for the Delaware County and Lebanon County nonattainment areas each lists these area source emissions by source category in an appendix to the SIP.

Onroad sources of emissions include motor vehicles, such as cars, trucks, and buses, which are operated on public roadways. PADEP modelled onroad emissions using EPA's Motor Vehicle Emission Simulator (MOVES) model, version MOVES2014, coupled with vehicle miles of travel activity levels. PADEP reports these onroad emissions estimates in an appendix of each area's SIP submittal by pollutant and by highway source category.

Nonroad sources are mobile, internal combustion sources other than highway motor vehicles, including, but not limited to, lawn and garden equipment, recreational vehicles, construction and agricultural equipment, and industrial equipment. However, emissions from locomotives, commercial marine vessels, and aircraft are included with the point and area source sectors. Nonroad mobile source emissions from different source categories are calculated using various methodologies, primarily by use of EPA's MOVES NONROAD emissions model or from EPA's National Mobile Inventory Model (NMIM). PADEP reports its nonroad emissions in an appendix to each area's base year SIP submittal.

EPA reviewed Pennsylvania's 2011 base year emission inventory submissions including results, procedures, and methodologies for the Delaware County and Lebanon County nonattainment areas and found them to be acceptable and approvable under sections 110 and 172(c)(3) of the CAA. EPA prepared a Technical Support Document (TSD) for each of the Delaware County and Lebanon County nonattainment areas in support of this rulemaking. These TSDs are available online at *http://www.regulations.gov,* Docket ID No. EPA–R03–OAR–2017–0423.

III. Proposed Action

EPA is proposing to approve Pennsylvania's SIP revision dated May 5, 2017 for the base year emission inventory for the Delaware County 2012 annual $PM_{2.5}$ NAAQS nonattainment area and Pennsylvania's SIP revision dated September 25, 2017 for the base year emission inventory for the Lebanon County 2012 annual $PM_{2.5}$ NAAQS nonattainment area. EPA is proposing to approve the base year emission inventories for these areas because the inventories for $PM_{2.5}$ and its precursors were prepared in accordance with the applicable requirements of sections 110 and 172(c)(3) of the CAA and its implementing regulations including 40 CFR 51.1008. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. EPA is taking a single rulemaking action proposing to approve both of these SIP submittals, which were submitted separately, as they address the same emission inventory requirement for two different moderate 2012 annual $PM_{2.5}$ nonattainment areas in the same state. However, if EPA receives adverse comment on the proposed approval affecting only one of these SIP revisions, EPA reserves the right to take separate final action on the remaining SIP revision if relevant comments are not received on that SIP revision.

IV. Statutory and Executive Order Reviews

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

In addition, this proposed rule to approve the base year emission inventory SIP revisions for the Delaware County and Lebanon County nonattainment areas under the 2012 annual $PM_{2.5}$ NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 19, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2018–09201 Filed 5–2–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2018–0211; FRL 9977–27–Region 7]

Air Plan Approval; Missouri; Regional Haze Plan and Prong 4 (Visibility) for the 2012 $PM_{2.5}$, 2010 NO_2, 2010 SO_2, and 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take three actions regarding the Missouri State Implementation Plan (SIP). The three SIP actions relate to how Missouri addresses transport as related to visibility and the 2012 Fine Particulate Matter ($PM_{2.5}$), 2010 Nitrogen Dioxide (NO_2), 2010 Sulfur Dioxide (SO_2), and 2008 Ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing approval of the portion of Missouri's September 5, 2014, Five-year Progress Report for the State of Missouri Regional Haze Plan and a subsequently submitted letter dated July 31, 2017, which clarifies that the state was changing from reliance on the Clean Air Interstate Rule (CAIR) to reliance on the Cross State Air Pollution Rule (CSAPR) for certain regional haze requirements; convert EPA's limited approval/limited disapproval of Missouri's regional haze plan to a full approval; and approve the states' submissions addressing the Clean Air Act (CAA or the Act) provisions that prohibit emissions activity in one state from interfering with measures to protect visibility in another state (prong 4) of Missouri's infrastructure SIP submittals for the 2012 Fine Particulate Matter ($PM_{2.5}$), 2010 Nitrogen Dioxide (NO_2), and 2010 Sulfur Dioxide (SO_2) NAAQS.

DATES: Comments must be received on or before June 4, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R07–OAR–2018–0211 to *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7016, or by email at *casburn.tracey@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. Background Information

A. Regional Haze SIPs and Their Relationship With CAIR and CSAPR

Section 169A(b)(2)(A) of the CAA requires states to submit regional haze SIPs that contain such measures as may be necessary to make reasonable progress towards the natural visibility goal at Class 1 areas, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART as determined by the state. Under the Regional Haze Rule (RHR), adopted in 1999, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to visibility impairment in a Class I area.[1] Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.[2] EPA provided states with this flexibility in the 1999 RHR, and further refined the criteria for assessing whether an alternative program provides for greater reasonable progress in two subsequent rulemakings.[3]

EPA demonstrated that CAIR would achieve greater reasonable progress than BART in revisions to the RHR made in 2005.[4] In those revisions, EPA amended its regulations to provide that states participating in the CAIR cap-and-trade programs pursuant to an EPA-approved CAIR SIP or states that remain subject to a CAIR Federal Implementation Plan (FIP) need not require affected BART-eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and nitrogen oxides (NO_X). As a result of EPA's determination that CAIR was ''better-than-BART,'' a number of states in the CAIR region, including Missouri, relied on the CAIR cap-and-trade programs as an alternative to BART for EGU emissions of SO_2 and NO_X in designing their regional haze SIPs. These states also relied on CAIR as an element of a long-term strategy (LTS) for achieving reasonable progress. However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded CAIR to EPA, which it did without vacatur to preserve the environmental benefits provided by CAIR.[5] On August 8, 2011, acting on the DC Circuit's remand, EPA promulgated CSAPR to replace CAIR and issued FIPs to implement the rule in CSAPR-subject states.[6] Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program.

Due to the DC Circuit's 2008 ruling that CAIR was ''fatally flawed'' and its resulting status as a temporary measure following that ruling, EPA could not fully approve regional haze SIPs to the

[1] *See* 64 FR 35714 (July 1, 1999).

[2] *See* 40 CFR 51.308(e)(2).

[3] See 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

[4] CAIR created regional cap-and-trade programs to reduce SO_2 and NO_X emissions in 27 eastern states (and the District of Columbia), including Alabama, that contributed to downwind nonattainment or interfered with maintenance of the 1997 8-hour ozone NAAQS or the 1997 $PM_{2.5}$ NAAQS. See 70 FR 39104.

[5] *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (DC Cir. 2008).

[6] CSAPR requires 28 eastern states to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 ozone NAAQS, the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2008 8-hour ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide ''budgets'' for emissions of annual SO_2, annual NO_X, and/or ozone-season NO_X by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years. See 76 FR 48208.

extent that they relied on CAIR to satisfy the EGU BART requirement. On these grounds, EPA finalized a limited disapproval of Missouri's regional haze SIP on June 7, 2012, triggering the requirement for EPA to promulgate a FIP unless Missouri submitted, and EPA approved, a SIP revision that corrected the deficiency.[7] EPA finalized a limited approval of Missouri's regional haze SIP on June 26, 2012, as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR.[8]

In the June 7, 2012 limited disapproval action, EPA also amended the RHR to provide that participation by a state's EGUs in a CSAPR trading program for a given pollutant—either a CSAPR federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision—qualifies as a BART alternative for those EGUs for that pollutant.[9] [10] Since EPA promulgated this amendment, numerous states covered by CSAPR have come to rely on the provision through either SIPs or FIPs.[11]

Numerous parties filed petitions for review of CSAPR in the DC Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR.[12] The DC Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the DC Circuit to resolve remaining issues in accordance with the high court's ruling.[13] On remand, the DC Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states.[14] The remanded budgets include the Phase 2 SO_2 emissions budgets for Alabama, Georgia, South Carolina, and Texas and the Phase 2 ozone-season NO_X budgets for eleven states. This litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule's Phase 2 budgets that were originally promulgated to begin on January 1, 2014, began on January 1, 2017.

On November 10, 2016, EPA published a notice of proposed rulemaking (NPRM) explaining the Agency's belief that the potentially material changes to the scope of CSAPR coverage resulting from the DC Circuit's remand will be limited to the withdrawal of the FIP provisions providing SO_2 and annual NO_X budgets for Texas and ozone-season NO_X budgets for Florida. This is due, in part, to EPA's approval of the portion of Alabama's October 26, 2015, SIP submittal adopting Phase 2 annual NO_X and SO_2 budgets equivalent to the Federally-developed budgets and to commitments from Georgia and South Carolina to submit SIP revisions adopting Phase 2 annual NO_X and SO_2 budgets equal to or more stringent than the Federally-developed budgets.[15] Since publication of the NPRM, Georgia and South Carolina have submitted these SIP revisions to EPA.[16] In the NPRM, EPA also proposed to determine that the limited changes to the scope of CSAPR coverage do not alter EPA's conclusion that CSAPR remains ''better-than-BART''; that is, that participation in CSAPR remains available as an alternative to BART for EGUs covered by the trading programs on a pollutant-specific basis. On September 21, 2017, Administrator Pruitt signed the final action, ''Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas.'' In this action, the agency removed Texas from CSAPR and affirmed the continued validity of the Agency's 2012 determination that participation in CSAPR meets the Regional Haze Rule's criteria for an alternative to the application of source-specific BART.

On July 31, 2017, the State of Missouri submitted a letter to EPA clarifying that the state had intended its Five-year Progress Report to revise its regional haze SIP to rely on its participation in the CSAPR trading programs for NO_X and SO_2 to satisfy the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units, pursuant to the option provided in 40 CFR 51.308(e)(4) (the ''CSAPR-better-than-BART'' provision). This letter has been added to the docket for this action and to the docket for the original action approving the Five-year progress report (EPA–R07–OAR–2015–0581).

EPA was not aware, at the time it approved Missouri's Five-year Progress Report, that the state intended that submission to also serve as a SIP revision substituting reliance on CAIR with reliance on CSAPR pursuant to 40 CFR 51.308(e)(4). With this understanding, we are now proposing to take an additional action on Missouri's Five-year Progress Report and to approve that submission, in conjunction with the clarification letter, as satisfying the SO_2 and NO_X requirements in 40 CFR 51.308(d)(3) and (e) for EGUs formerly subject to CAIR. If EPA finalizes this proposal, we would also convert the limited approval/limited disapproval of Missouri's regional haze plan to a full approval.

B. Infrastructure SIPs

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years (or less, if the Administrator so prescribes) after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions, which are made for satisfying the requirements of sections 110(a)(1) and 110(a)(2), as ''infrastructure SIP'' submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The

[7] *See* 77 FR 33642. EPA finalized limited disapprovals of fourteen states' regional haze SIP submissions that relied on CAIR in this action, including Missouri's.

[8] *See* 77 FR 38007.

[9] *See* 40 CFR 51.308(e)(4).

[10] Legal challenges to the CSAPR-Better-than-BART rule from state, industry, and other petitioners are pending. *Utility Air Regulatory Group* v. *EPA,* No. 12–1342 (D.C. Cir. filed August 6, 2012).

[11] EPA has promulgated FIPs relying on CSAPR participation for BART purposes for Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, 77 FR at 33654, and Nebraska, 77 FR 40150, 40151 (July 6, 2012). EPA has approved Minnesota's and Wisconsin's SIPs relying on CSAPR participation for BART purposes. *See* 77 FR 34801, 34806 (June 12, 2012) for Minnesota and 77 FR 46952, 46959 (August 7, 2012) for Wisconsin.

[12] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (DC Cir. 2012).

[13] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014).

[14] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (DC Cir. 2015).

[15] *See* 81 FR 78954.

[16] Georgia's rulemaking to adopt the Phase 2 annual NO_X and SO_2 budgets became state effective on July 20, 2017, and the State will submit a SIP revision to EPA in the near future. South Carolina submitted a SIP revision to EPA for parallel processing on May 26, 2017, to adopt the Phase 2 annual NO_X and SO_2 budgets and that action was finalized by EPA in October 2017. See 82 FR 47936.

contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time at which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes 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 from 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 from interfering with measures to protect visibility in another state (prong 4). 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.

Through this action, EPA is proposing to approve the prong 4 portion of Missouri's infrastructure SIP submissions for the 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS. All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the NAAQS relevant to this proposal is provided below. For comprehensive information on these NAAQS, please refer to the **Federal Register** notices cited in the following subsections.

1. 2010 1-Hour SO_2 NAAQS

On June 2, 2010, EPA revised the 1-hour primary SO_2 NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.[17] States were required to submit infrastructure SIP submissions for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013. Missouri submitted an infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS on July 08, 2013. This proposed action only addresses the prong 4 element of that submission.[18]

2. 2010 1-Hour NO_2 NAAQS

On January 22, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 ppb, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations.[19] States were required to submit infrastructure SIP submissions for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013. Missouri submitted infrastructure SIP submissions for the 2010 1-hour NO_2 NAAQS on April 30, 2013. This proposed action only addresses the prong 4 element of those submissions.[20]

3. 2012 $PM_{2.5}$ NAAQS

On December 14, 2012, EPA revised the annual primary $PM_{2.5}$ NAAQS to 12 micrograms per cubic meter ($\mu g/m^3$).[21] States were required to submit infrastructure SIP submissions for the 2012 $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015. Missouri submitted an infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS on October 14, 2015. This proposed action only addresses the prong 4 element of that submission.[22]

4. 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA revised the 8-hour Ozone NAAQS to 0.075 parts per million.[23] States were required to submit infrastructure SIP submissions for the 2008 8-hour Ozone NAAQS to EPA no later than March 12, 2011. Missouri submitted an infrastructure SIP for the 2008 8-hour Ozone NAAQS on July 8, 2013. This proposed action only addresses the prong 4 element of that submission.[24]

II. What are the prong 4 requirements?

The prong 4 requirement of CAA section 110(a)(2)(D)(i)(II) requires a state's implementation plan to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of the CAA (which includes sections 169A and 169B). On September 13, 2013, the EPA issued *Guidance on the Infrastructure State Implementation Plan (SIP) Elements Under Clean Air Act Sections 110(a)(1) and 110(a)(2)* (''2013 Guidance'').[25] EPA developed this document to provide states with guidance for infrastructure SIPs for any new or revised NAAQS. The 2013 Guidance states that the prong 4 requirements are satisfied by an approved SIP provision that EPA has found to adequately address any contribution of that state's sources that impacts the visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

The 2013 Guidance lays out how a state's infrastructure SIP may satisfy prong 4. One way that a state can meet the requirements is via confirmation in its infrastructure SIP submission that the state has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze RPGs for mandatory Class I areas in other states.

[17] *See* 75 FR 35520 (June 22, 2010).

[18] The other portions of Missouri's July 08, 2013, SO_2 infrastructure submission are being addressed in a separate EPA action. *See* the docket for EPA–R07–OAR–2017–0515.

[19] *See* 75 FR 6474 (February 9, 2010).

[20] The other portions for Missouri's April 30, 2013, NO_2 infrastructure submissions are being addressed in a separate EPA action. *See* the docket for EPA–R07–OAR–2017–0268.

[21] *See* 78 FR 3086 (January 15, 2013).

[22] The other portions of Missouri's December 9, 2015, $PM_{2.5}$ infrastructure submission are being addressed in separate EPA actions. *See* the docket for EPA–R07–OAR–2017–0513.

[23] *See* 73 FR 16436 (March 27, 2008).

[24] The other portions of Missouri's July 8, 2013, ozone infrastructure SIP submission are being addressed in a separate EPA action. *See* the docket for EPA–R07–OAR–2015–0356.

[25] ''Guidance on the 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.

III. What is EPA's analysis of how Missouri addressed prong 4 and regional haze?

Each of Missouri's infrastructure SIP submittals (2008 8-hour Ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$) relied on the State having a fully approved regional haze SIP to satisfy its prong 4 requirements. However, at the time of those submittals, EPA had not fully approved Missouri's regional haze SIP, as the Agency issued a limited disapproval of the State's original regional haze plan on June 7, 2012. As detailed earlier in this notice, EPA is proposing to convert EPA's limited approval/limited disapproval of Missouri's regional haze plan to a full approval because final approval of Missouri's intended SIP revision relying on CSAPR pursuant to 40 CFR 51.308(e)(4) would correct the deficiencies that led to EPA's limited approval/limited disapproval of the State's regional haze SIP. Because a state may satisfy prong 4 requirements through a fully approved regional haze SIP, EPA is therefore also proposing to approve the prong 4 portion of Missouri's 2010 1-hour NO_2, 2010 1-hour SO_2, 2012 annual $PM_{2.5,}$ and 2008 8-hour Ozone infrastructure SIP submissions.

IV. Proposed Action

As described above, EPA is proposing to take the following actions: (1) Approve the portion of Missouri's September 5, 2014 *Five-year Progress Report for the State of Missouri Regional Haze Plan* which, as clarified by the July 31, 2017 letter, identified the state's change from reliance on CAIR to a reliance on the CSAPR FIP for certain regional haze requirements; (2) convert EPA's limited approval/limited disapproval of Missouri's regional haze plan to a full approval; and (3) approve the state's infrastructure SIP submissions addressing the CAA prong 4 requirements for the 2008 Ozone, 2012 $PM_{2.5,}$ 2010 NO_2, and 2010 SO_2 NAAQS.

V. Statutory and Executive Order Reviews

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

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

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).

List of Subjects in 40 CFR Part 52

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

Dated: April 17, 2018.

Karen A. Flournoy,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

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 AA—Missouri

■ 2. In § 52.1320 the table in paragraph (e) is amended by revising entry (70), and adding entry (74) in numerical order.

The revision and addition reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(e)* * *

EPA–APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	* *	* *
(70) State Implementation Plan (SIP) Revision for Regional Haze (2014 Five-Year Progress Report).	Statewide	9/5/2014	[*date of final publication in the* ***Federal Register***] [Final rule ***Federal Register*** *citation*].	Missouri submitted a clarification letter to its Five-year Progress Report on July 31, 2017 that is part of this action. [EPA–R07–OAR–2015–0581; FRL–9949–68–Region 7]; [EPA–R07–OAR–2018–0211; FRL–*9977–27*–Region 7.]
*	*	*	* *	* *
(74) Sections 110(a)(2) Infrastructure Prong 4 Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, and the 2012 Fine Particulate Matter NAAQS.	Statewide	7/8/2013; 8/30/2013; 7/8/2013; 10/14/2015.	[*date of final publication in the* ***Federal Register***] [Final rule ***Federal Register*** *citation*].	This action approves the following CAA elements: 110(a)(2)(D)(i)(II)—prong 4. [EPA–R07–OAR–2018–0211; FRL–*9977–27*–Region 7.]

■ 3. Amend § 52.1339 by revising Paragraph (a) and removing paragraphs (c) through (e) to read as follows:

§ 52.1339 Visibility protection

(a) The requirements of section 169A of the Clean Air Act are met because the regional haze plan submitted by Missouri on August 5, 2009, and supplemented on January 30, 2012, in addition to the 5-year progress report submitted on September 5, 2014, and supplemented by state letter on July 31, 2017, includes fully approvable measures for meeting the requirements of the Regional Haze Rule including the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units.

* * * * *

[FR Doc. 2018–09211 Filed 5–2–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0476; FRL–9977–01–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Attainment Demonstration for the Dallas/Fort Worth 2008 Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the ozone attainment demonstration State Implementation Plan (SIP) revisions for the Dallas/Fort Worth (DFW) moderate ozone nonattainment area under the 2008 ozone National Ambient Air Quality Standard (NAAQS) submitted by the State of Texas (the State). Specifically, EPA is proposing approval of the attainment demonstration, a reasonably available control measures (RACM) analysis, the contingency measures plan in the event of failure to attain the NAAQS by the applicable attainment date, and the associated Motor Vehicle Emissions Budgets (MVEBs) for 2017, which is the attainment year for the area.

DATES: Written comments must be received on or before June 4, 2018.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0476, at *http://www.regulations.gov* or via email to *todd.robert@epa.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, please contact Robert M. Todd, 214–665–2156, *todd.robert@epa.gov*. 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*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, 214–665–2156, *todd.robert@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Mr. Todd or Mr. Bill Deese at 214–665–7253.

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

Table of Contents

I. Background

In 2008 we revised the 8-hour ozone primary and secondary NAAQS to a level of 0.075 parts per million (ppm) or 75 parts per billion (ppb) to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008). The 2008 ozone NAAQS revised the 1997 8-hour ozone NAAQS of 0.08 ppm. The DFW area was classified as a ''Moderate'' ozone nonattainment area (NAA) for the 2008 ozone NAAQS and initially given an attainment date of no later than December 31, 2018 (77 FR 30088 and 77 FR 30160, May 21, 2012). The DFW Moderate ozone NAA for the 2008 ozone standard consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise counties (DFW NAA).

On December 23, 2014, the DC Circuit Court of Appeals issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC* v. *EPA*, 777 F.3d 456, 464–69 (DC Cir. 2014). Consistent with the Court's decision to vacate that portion of the rule, we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS, and set the attainment deadline for all 2008 Moderate ozone nonattainment areas, including the DFW NAA as July 20, 2018 (80 FR 12264, March 6, 2015).

On July 10, 2015, Texas submitted a SIP revision for the DFW NAA based on an attainment date of December 31, 2018. Because that date was vacated by the Court, Texas had to further revise its SIP to address an attainment date of July 20, 2018 which it submitted on August 5, 2016.[1] The portion of the July 10, 2015 SIP submittal that was not impacted by the Court's decision was the contingency measures plan portion as Texas was able to address the July 20, 2018 attainment deadline for this portion of the plan. Because the State revised and replaced the other portions of the 2015 SIP that were impacted by the Court's decision, with the August 5, 2016 submittal, the remainder of the 2015 submittal is superseded by the August 5, 2016 submittal. See the docket for copies of these submittals.

The August 5, 2016 submittal is designed to demonstrate attainment of the 2008 ozone NAAQS by the attainment date of July 20, 2018 and relies, in part, on a variety of controls on minor and major stationary sources and controls on mobile source emissions, achieved through a combination of Federal, State and Local measures. These measures are projected to reduce emissions of NO_X and VOC in the DFW NAA.[2] The measures that have been relied on in this demonstration have been approved in prior **Federal Register** (FR) actions, as noted below. The Texas Commission on Environmental Quality (TCEQ or the State) used photochemical modeling and other corroborative evidence to predict the improvement in ozone levels that will occur due to these controls while accounting for growth in the DFW NAA.

Per the requirements in our final rule titled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule,'' 80 FR 12264 (March 6, 2015), SIP Requirements Rule (SRR), an area classified as Moderate under 40 CFR 51.1103(a)—in this case is the DFW NAA—shall be subject to the requirements applicable for that classification under CAA section 182(b).[3] For each nonattainment area, under 40 CFR 51.1108, the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. Consistent with CAA section 182(b), each state in which a Moderate Area is located shall, with respect to the Moderate Area, submit plan provisions for RFP, RACM, RACT, an emissions inventory, an emissions statement, motor vehicle I/M, a NNSR program with the classification's general offset requirements, and control measures needed to provide for attainment by the applicable attainment deadline.[4]

The attainment demonstration requirements for the 2008 ozone standard can be found in 40 CFR 51.1108 (Modeling and attainment demonstration requirements) and 40 CFR 51.112 (Demonstration of adequacy); these requirements are described fully in the Technical Support Documents (TSD), provided in the docket for this proposed action.

In general, an ozone attainment demonstration includes a photochemical modeling analysis and other evidence (referred to as ''Weight of Evidence'') (WOE) showing how an area will achieve the standard as expeditiously as practicable, but no later than the attainment date specified for its classification.

Below we discuss the statutory and regulatory requirements that prescribe our review of the State's attainment demonstration, the elements in the State's submittal, and our evaluation of those elements comprising the attainment demonstration SIP. As stated

[1] In the DFW AD SIP revision for the 2008 eight-hour ozone NAAQS submitted to the EPA on July 10, 2015, a commitment was made to address the D.C. Circuit's decision that changed the attainment deadlines for the 2008 eight-hour ozone NAAQS to a July 20, 2018 attainment date and a 2017 attainment year. The 2016 SIP revision includes a new photochemical modeling analysis, a weight of evidence analysis, and a reasonably available control measures analysis that reflect the 2017 attainment year.

[2] NO_X and VOC are precursors to ozone formation. Additional information on ozone formation and the NAAQS is provided on the EPA website: *https://www.epa.gov/ozone-pollution.* Additional information on the history of the Texas and DFW SIPs is provided on the TCEQ website: *https://www.tceq.texas.gov/airquality/sip* and in the proposed rule to address the DFW attainment demonstration under the 1997 ozone NAAQS, provided in docket ID EPA–R06–OAR–2007–0524.

[3] On February 16, 2018 the DC Circuit issued a decision on the 2008 ozone NAAQS SRR. The adverse holdings of the case do not affect our proposal action.

[4] We approved the motor vehicle I/M, NNSR, and offsets for the DFW Moderate NAA under the 2008 ozone NAAQS at 82 FR 27122 (June 14, 2017). We approved the NO_X rules on April 13, 2016 at 81 FR 21747 and NO_X RACT for all affected sources but for one cement manufacturing company at 82 FR 44320 (September 22, 2017); and the VOC rules and VOC RACT were approved December 21, 2017 at 82 FR 60546. We approved the RFP requirements at 81 FR 88124 (December 7, 2016). We approved the emissions inventory at 80 FR 9204 (February 20, 2015). We previously approved provisions for an emissions statement program for the 1997 1-hour ozone NAAQS at 59 FR 44036 (August 26, 1994). In a separate action, we expect to propose to convert the conditional approval of the cement company to a full approval as RACT and propose that the emissions statement program for the DFW Moderate NAA meets the 2008 ozone NAAQS requirements. These two SIP elements are separate from a review of an attainment demonstration SIP.

above, we previously approved several of the State's nonattainment area plan requirements. We are evaluating the attainment demonstration and its associated MVEBs, RACM, and contingency measures plan in the event of failure to attain the NAAQS by the applicable attainment date in this action.

II. The EPA's Evaluation

A. Review of Eight-Hour Attainment Demonstration Modeling and Weight of Evidence

EPA's regulations at 40 CFR 51.1108(c) specifically require that areas classified as moderate and above submit a modeled attainment demonstration based on a photochemical grid modeling evaluation or any other analytical method determined by the Administrator to be at least as effective as photochemical modeling. Section 51.1108(c) also requires each attainment demonstration to be consistent with the provisions of 40 CFR 51.112, including Appendix W to 40 CFR part 51 (*i.e.,* ''EPA's Guideline on Air Quality Models,'' 70 FR 68218, November 9, 2005 and 82 FR 5182, January 17, 2017). See also EPA's ''Guidance on the Use of Models and Other Analyses for Air Quality Goals in Attainment Demonstrations for Ozone, $PM_{2.5}$, and Regional Haze,'' April 2007 and ''Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' December 2014 (hereafter referred to as ''EPA's 2007 A.D. guidance'' and ''EPA's 2014 Draft A.D. guidance''), which describe criteria that an air quality model and its application should meet to qualify for use in an 8-hour ozone attainment demonstration. For the detailed review of modeling and the WOE analyses and EPA's analysis of the DFW 8-hour Ozone attainment demonstration see the ''Modeling and Other Analyses Attainment Demonstration'' (MOAAD) Technical Support Document (TSD). The MOAAD TSD also includes a complete list of applicable modeling guidance documents. These guidance documents provide the overall framework for the components of an attainment demonstration, how the modeling and other analyses should be conducted, and overall guidance on the technical analyses for attainment demonstrations.

As with any predictive tool, there are inherent uncertainties associated with photochemical modeling. EPA's guidance recognizes these uncertainties and provides approaches for considering other analytical evidence to help assess whether attainment of the NAAQS is demonstrated. This process is called a WOE determination. EPA's modeling guidance (updated in 1996, 1999, and 2002) discusses various WOE approaches. EPA's modeling guidance has been further updated in 2005, 2007 and a Draft in 2014 for the 1997 and 2008 8-hour ozone attainment demonstration procedures to include a WOE analysis as a part of any attainment demonstration. This guidance recommends that all attainment demonstrations include supplemental analyses beyond the recommended modeling. These supplemental analyses would provide additional information such as data analyses, and emissions and air quality trends, which would help strengthen the overall conclusion drawn from the photochemical modeling. EPA's Guidance for 1997 8-hour ozone SIPs recommended that a WOE analysis be included as part of any attainment demonstration SIP where the modeling results predict Future Design Values (FDVs) ranging from 82 to less than 88 ppb (EPA's 2005 and 2007 A.D. Guidance documents).[5] EPA's recent 2014 Draft A.D. Guidance removed the specific range and indicated that WOE should be analyzed when the results of the modeling attainment test are close to the standard. EPA's interpretation of the Act to allow a WOE analysis has been upheld. See *1000 Friends of Maryland* v. *Browner,* 265 F. 3d 216 (4th Cir. 2001) and *BCCA Appeal Group* v. *EPA,* 355 F.3d 817 (5th Cir. 2003).

TCEQ submitted the DFW attainment demonstration SIP with photochemical modeling and a WOE analyses on August 5, 2016. The results of the photochemical modeling and WOE analyses are discussed below.

1. What is a photochemical grid model?

Photochemical grid modeling is the state-of-the-art method for predicting the effectiveness of control strategies in reducing ozone levels. The models use a three-dimensional grid to represent conditions in the area of interest. TCEQ chose to use the Comprehensive Air Model with Extensions (CAMx), Version 6.20 photochemical model for this attainment demonstration SIP. The model is based on well-established treatments of advection, diffusion, deposition, and chemistry. TCEQ has used the CAMx model in other SIPs and EPA has approved many SIPs using CAMx based modeling analyses. 40 CFR part 51 Appendix W indicates that photochemical grid models should be used for ozone SIPs and lists a number of factors to be considered in selecting a photochemical grid model to utilize. EPA has reviewed the TCEQ's reasons for selecting CAMx and EPA agrees with the choice by TCEQ to utilize CAMx for this SIP.

In this case, TCEQ has developed a modeling grid system that consists of three nested grids. The outer grid stretches from west of California to east of Maine and parts of the Atlantic Ocean to the east, and from parts of southern Canada in the north to and much of Mexico to the south extending to near the Yucatan Peninsula on the southern edge. The model uses nested grid cells of 36 km on the outer portions, 12 km for most of the Region 6 states (most of New Mexico and all of Oklahoma, Arkansas, Louisiana, and Texas) and 4-kilometer grid cells for much of Texas (not including West Texas and the Panhandle) and portions of nearby States. The 4-kilometer grid cells include the DFW Nonattainment Area. For more information on the modeling domain, see the MOAAD TSD. The model simulates the movement of air and emissions into and out of the three-dimensional grid cells (advection and dispersion); mixes pollutants upward and downward among layers; injects new emissions from sources such as point, area, mobile (both on-road and nonroad), and biogenic into each cell; and uses chemical reaction equations to calculate ozone concentrations based on the concentration of ozone precursors and incoming solar radiation within each cell. Air quality planners choose historical time period(s) (episode(s)) of high ozone levels to apply the model. Running the model requires large amounts of data inputs regarding the emissions and meteorological conditions during an episode.

Modeling to duplicate conditions during an historical time period is referred to as the base case modeling and is used to verify that the model system can predict historical ozone levels with an acceptable degree of accuracy. It requires the development of a base case inventory, which represents the emissions during the time period for the meteorology that is being modeled. These emissions are used for model performance evaluations. Texas modeled much of the 2006 ozone season (May 31–July 2 and August 13–September 15), so the base case emissions and meteorology are for 2006. If the model can adequately replicate the measured ozone levels in the base case and responds adequately to diagnostic tests, it can then be used to project the response of future ozone levels to proposed emission control strategies.

[5] A.D. is Attainment Demonstration.

2. Model Selection

TCEQ chose to use recent versions of Weather Research and Forecasting Model (WRF) version 3.2 for the meteorological modeling, Emission Processing System (EPS) version 3 for the emission processing, and CAMx version 6.20 for the photochemical grid modeling. WRF is considered a state of the science meteorological model and its use is acceptable in accordance with 40 CFR part 51 Appendix W Section 5. The combination of EPS for emissions processing and CAMx for photochemical modeling constitutes one of the two predominant modeling platforms used for SIP level modeling. These models and versions that TCEQ used are acceptable and in accordance with 40 CFR part 51 Appendix W Section 5.

3. What episode did Texas choose to model?

Texas chose to model much of the 2006 ozone season which included a number of historical episodes with monitored exceedances. The 2006 ozone season was a period when multiple exceedance days occurred with a good representation of the variety of meteorological conditions that lead to ozone exceedances in the DFW NAA. Texas chose to model May 31–July 2, 2006 and August 13–September 15, 2006. In addition, Texas conducted the TexAQS II air quality field study in Houston, Dallas, and throughout the eastern half of Texas during 2006 providing additional data that was helpful in modeling and accessing model performance for these periods for the DFW A.D.

We evaluated Texas' 2006 episode selection for consistency with our modeling guidance (2007, and Draft 2014 versions). Among the items that we considered were the ozone levels during the selected period compared to the design value[6] (DV) at the time; how the meteorological conditions during the proposed episode match with the conceptual model of ozone exceedances that drive the area's DV; were enough days modeled; and was the time period selected robust enough to represent the area's problem for evaluating future control strategies. EPA's guidance indicates that all of these items should be considered when evaluating available episodes and selecting episodes to be modeled. EPA believes that the two 2006 periods (May 31–July 2 and August 13–September 15) are acceptable time periods for use in TCEQ's development of the 8-hour ozone attainment plan. We note that this is an older episode but it is one of the few years with a significant number of exceedances compared to most other years in the 2006–2012 period that were available when Texas started the modeling effort for this SIP in the 2012/2013 timeframe. The only other potential period we had previously identified with Texas was the 2012 ozone season, which TCEQ did investigate but they were not able to get acceptable base case model performance in time for use in this SIP revision in the meteorological and ozone modeling for this 2012 episode in the DFW area at the time this SIP was being developed. The 2006 period also had the unique benefit of additional field data collected as part of TexAQS II. EPA guidance suggests that having the extra field data is advantageous. In light of all this information, EPA concurs with this episode being adequate. See the MOAAD TSD for further discussion and analysis.

4. How well did the model perform?

Model performance is a term used to describe how well the model predicts the meteorological and ozone levels in an historical episode. EPA has developed various diagnostic, statistical and graphical analyses that TCEQ has performed to evaluate the model's performance to determine if the model is working adequately to test control strategies. TCEQ performed many analyses of both interim model runs and the final base case model run and deemed the model's performance adequate for control strategy development. As described below, we agree that the TCEQ's model performance is adequate.

From 2012 to 2016, several iterations of the modeling were performed by TCEQ incorporating various improvements to the meteorological modeling, the 2006 base case emissions inventory, and other model parameters. TCEQ shared model performance analyses with EPA and EPA provided input. This data included analysis of meteorological outputs compared to benchmark statistical parameters that TCEQ previously developed as target values that are being used in many areas of the country. TCEQ also shared graphical analyses of the meteorology with EPA. In addition, TCEQ shared extensive analyses of the photochemical modeling for several base case modeling runs with EPA.

EPA has reviewed the above information and is satisfied that the meteorological modeling was meeting most of the statistical benchmarks, and was transporting air masses in the appropriate locations for most of the days.[7] EPA also conducted a review of the model's performance in predicting ozone and ozone precursors and found that performance was within the recommended 1-hour ozone statistics for most days. We evaluate 1-hour time series and metrics as this information has less averaging/smoothing than the 8-hour analyses and results in a higher resolution for evaluating if the modeling is getting the rise and fall of ozone in a similar manner as the monitoring data. We also evaluated the 8-hour statistics, results of diagnostic and sensitivity tests, and multiple graphical analyses and determined that overall the ozone performance was acceptable for Texas to move forward with future year modeling and development of an attainment demonstration.

EPA does not expect any modeling to necessarily be able to meet all the EPA model performance goals, but relies on a holistic approach to determine if the modeling is meeting enough of the goals, the time series are close enough and diagnostic/sensitivity modeling indicates the modeling is performing well enough to be used for assessing changes in emissions for the model attainment test.[8] EPA agrees that the overall base case model performance is acceptable, but notes that even with the refinements, the modeling still tends to have some bias performance concerns on the higher ozone days with some of the days being over predicted and some

[6] The design value is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration (40 CFR 50, Appendix I).

[7] There are a number of time series and statistical analyses that EPA evaluates in determining if meteorological modeling and ozone modeling is acceptable and EPA compares these analyses in context with other SIPs and modeling conducted for EPA rulemaking to see if the modeling meets most of the benchmarks and is acceptable. EPA's modeling guidance for both meteorological modeling and ozone modeling indicates general goals for model performance statistics based on what EPA has found to be acceptable model performance goals from evaluations of a number of modeling analyses conducted for SIPs and Regulatory development. EPA's guidance also indicates that none of the individual statistics goals is a ''pass/fail'' decision but that the overall suite of statistics, time series, model diagnostics, and sensitivities should be evaluated together in a holistic approach to determine if the modeling is acceptable. Modeling is rarely perfect, so EPA's basis of acceptability is if the model is working reasonably well most of the time and is doing as well as modeling for other SIPs and EPA rulemaking efforts. For more details on model performance analyses and acceptability see the MOAAD TSD. (EPA 2007 A.D. Guidance, EPA 2014 Draft A.D. Guidance, Emery, C., and E. Tai, (2001), ''Enhanced Meteorological Modeling and Performance Evaluation for Two Texas Ozone Episodes '', prepared for the Texas Near Non-Attainment Areas through the Alamo Area Council of Governments'', by ENVIRON International Corp, Novato, CA)

[8] *Id.*

under predicted. The modeling also tended to have a slight overprediction bias for the Kaufman monitor which is usually upwind of the DFW area and more representative of background ozone entering the DFW area. See the MOAAD TSD for further analysis.

5. Once the base case is determined to be acceptable, how is the modeling used for the attainment demonstration?

Before using the modeling for attainment test and potential control strategy evaluation, TCEQ reviewed the base case emission inventory, and made minor adjustments to the inventory to account for things that would not be expected to occur again or that were not normal (examples: Inclusion of EGUs that were not operating due to temporary shutdown during the base case period but were expected to be operating in 2017, adjusting the hour specific EGUs CEM based NO_X emissions to a typical Ozone season day emission rate). This adjusted emission inventory is called the 2006 baseline emission inventory. The photochemical model was then executed again to obtain a 2006 baseline model projection.

Since DFW is classified as a moderate NAA, the attainment deadline is as expeditiously as practicable but no later than July 20, 2018. To meet this date, it is necessary for emission reductions to be in place by no later than what is termed the attainment year, which in this case is 2017. Future case modeling using the base case meteorology and estimated 2017 emissions is conducted to estimate future ozone levels factoring in the impact of economic growth in the region and State and Federal emission controls.

EPA guidance recommends that the attainment test use the modeling analysis in a relative sense instead of an absolute sense. To predict future ozone levels, we estimate a value that we refer to as the Future Design Value (FDV). First, we need to calculate a Base Design Value (BDV) from the available monitoring data. The BDV is calculated for each monitor that was operating in the base period by averaging the three DVs that include the base year (2006). The DVs for 2004–2006, 2005–2007, and 2006–2008 are averaged to result in a center-weighted BDV for each monitor.

To estimate the FDV, a value is also calculated for each monitor that is called the Relative Response Factor (RRF) using a ratio of baseline and future modeling results around each monitor. This calculation yields the RRF for that monitor. The RRF is then multiplied by the Base Design Value (BDV) for each monitor to yield the FDV for that monitor. The modeled values for each monitor may be calculated to hundredths of a ppb, then truncated to an integer (in ppb) as the final step in the calculation as recommended by EPA's guidance. The truncated values are included in the tables in this action. TCEQ employed EPA's recommended approach for calculating FDV's. For information on how the FDV is calculated refer to the MOAAD TSD.

The 2014 Draft A.D. Guidance indicates that instead of using all days above the standard (75 ppb) in the baseline, that the subset of 10 highest baseline days at each monitor should be used for calculating an RRF.[9] The 10 highest days are the 10 highest 8-hour maximum daily values at each specific monitor. TCEQ provided the 2017 FDV values for each of the monitors using both procedures (2007 A.D Guidance and 2014 Draft A.D. Guidance).

EPA has reviewed the components of TCEQ's photochemical modeling demonstration and finds the analysis meets 40 CFR part 51, including 40 CFR part 51 Appendix W—Guideline on Air Quality Models. For a more complete description of the details of the base case modeling inputs, set-up, settings, the meteorology and photochemical model performance analysis (and EPA's evaluation of these procedures and conclusions), see the MOAAD TSD in the Docket for this action (EPA–RO6–OAR–2016–0476).

6. What did the results of TCEQ's 2017 future year attainment demonstration modeling show?

The results of modeling the 2017 future baseline modeling run are shown in Table 1. In Table 1, the model FDV calculations using both EPA's 2007 A.D. Guidance method calculation and the more recent 2014 Draft A.D. Guidance calculation method are shown. We have calculated the FDVs in the following tables using the final truncated numbers in accordance with EPA guidance. EPA's more recent 2014 Draft A.D. Guidance to use just the top 10 (highest) 8-hour days from the 2006 baseline modeling instead of all days is a result of previous ozone analyses that EPA reviewed and determined that the older 2007 A.D. Guidance method can include too many days when modeling an area that can have many exceedances and can result in underestimating actual FDVs. Using the top 10 days shifts the focus of the attainment test to the highest and typically hardest days at each monitor. EPA's 2014 Draft A.D. Guidance has not been finalized as the guidance also covers $PM_{2.5}$ and Regional Haze and EPA has delayed finalization while changes in the Regional Haze Rules and guidance have been under review. We have evaluated both approaches in the DFW modeling and are focusing on the 2014 Draft A.D. modeling results because we find it represents a more appropriate analysis of the attainment test. For example, the 2007 A.D. Guidance method results in 34 modeled days being used in the attainment test for the Denton monitor which includes a number of days where overall ozone was predicted to exceed in the 2006 baseline but was not predicted to exceed in the 2017 modeling analysis. As a result, this older guidance appears to include a number of days that are not predicted to be high ozone or exceedance days in 2017 but are still included in calculating an RRF and a FDV for the monitor. EPA's full analysis for this DFW modeling, of the two FDV calculations, and our results/conclusions for all the monitors is included in the MOAAD TSD. Table 1 includes the modeling projections prior to evaluating any other modeling sensitivity runs.

TABLE 1—SIP MODELING PROJECTIONS FOR 2017

2006 DFW area monitor and CAMS code	2006 DV_B (ppb)	2017 DV_F (ppb)	2017 Truncated DV_F (ppb)	Top 10 2006 baseline days >75 (ppb)	
				2017 DV_F (ppb)	2017 Truncated DV_F (ppb)
Denton Airport South—C56	93.33	77.86	77	76.26	76

[9] The 10 highest baseline days at a monitor are summed and become the denominator and the future year values for the same 10 days are summed and become the numerator in the RRF calculation.

TABLE 1—SIP MODELING PROJECTIONS FOR 2017—Continued

2006 DFW area monitor and CAMS code	2006 DV_B (ppb)	2017 DV_F (ppb)	2017 Truncated DV_F (ppb)	Top 10 2006 baseline days >75 (ppb)	
				2017 DV_F (ppb)	2017 Truncated DV_F (ppb)
Eagle Mountain Lake—C75	93.33	77.52	77	76.55	76
Grapevine Fairway—C70	90.67	77.2	77	75.65	75
Keller—C17	91	76.77	76	75.35	75
Fort Worth Northwest—C13	89.33	75.94	75	74.78	74
Frisco—C31	87.67	74.4	74	73.85	73
Dallas North #2—C63	85	73.35	73	72.23	72
Dallas Executive Airport—C402	85	72.21	72	72.05	72
Parker County—C76	87.67	72.17	72	72.4	72
Cleburne Airport—C77	85	71.1	71	69.86	69
Dallas Hinton Street—C401	81.67	70.96	71	69.31	69
Arlington Municipal Airport—C61	83.33	70.57	70	69.86	69
Granbury—C73	83	68.73	68	68.41	68
Midlothian Tower—C94	80.5	67.77	67	67.44	67
Pilot Point—C1032	81	67.4	67	66.6	66
Rockwall Heath—C69	77.67	65.65	65	65.81	65
Midlothian OFW—C52	75	63.17	63	62.57	62
Kaufman—C71	74.67	62.04	62	62.11	62
Greenville—C1006	75	61.78	61	62.09	62

The second column is the Base DV for the 2006 period. Using the 2007 A.D. guidance 15 of the 19 DFW area monitors are in attainment, one has a FDV of 76 ppb and 3 monitors have a FDV of 77 ppb. Using the 2014 Draft A.D. Guidance all but two of the monitors are attainment. Two are projected to be near attainment with a FDV of 76 ppb. The two monitors over 76 ppb have modeled values of 76.55 and 76.26 at Eagle Mountain Lake and Denton Monitors and are 0.56 and 0.27 ppb from attainment values.[10]

The standard attainment test is applied only at monitor locations. The 2007 A.D. Guidance and the 2014 Draft A.D. Guidance both recommend that areas within or near nonattainment counties but not adjacent to monitoring locations be evaluated in an unmonitored areas (UMA) analysis to demonstrate that these UMAs are expected to reach attainment by the required future year. The UMA analysis is intended to identify any areas not near a monitoring location that are at risk of not meeting the NAAQS by the attainment date. EPA provided the Modeled Attainment Test Software (MATS) to conduct UMA analyses, but has not specifically recommended in EPA's guidance documents that the only way of performing the UMA analysis is by using the MATS software. EPA has allowed states to develop alternative techniques that may be appropriate for their areas or situations.

TCEQ used their own UMA analysis (called the TCEQ Attainment Test for Unmonitored areas or TATU). EPA previously reviewed TATU during our review of the modeling protocol for the HGB area (2010 Attainment Demonstration SIP) and we are proposing approval of the use of TATU's tool and its Unmonitored Area analysis as acceptable for meeting the recommended evaluation of ozone levels in the Unmonitored Area analysis for this SIP approval action (See MOAAD TSD for review and evaluation details). The TATU is integrated into the TCEQ's model post-processing stream and MATS requires that modeled concentrations be exported to a personal computer-based platform, thus it would be more time consuming for TCEQ to use MATS for the UMA. Based on past analysis, results between TATU and MATS are similar and EPA's guidance (2007 and Draft 2014) provides states the flexibility to use other tools for the UMA.

The TATU analysis included in the SIP indicates the maximum in the unmonitored areas is not significantly different than the 2017 FDVs calculated using all days above 75 ppb in the baseline (2007 A.D. Guidance). TCEQ has not adjusted the TATU tool to use the FDVs from the 10-Day FDV calculation procedure in the 2014 Draft A.D. Guidance. TCEQ's TATU analysis indicates the highest values are in the same area as the five monitors that typically record the highest ozone levels in the DFW area, located north and west of Fort Worth: Denton Airport South, Eagle Mountain Lake, Fort Worth Northwest, Grapevine, and Keller. We agree with TCEQ's analysis that there are not areas outside of the monitored areas that are of concern and the highest area in the unmonitored analysis is in the heavily monitored area in the northwest quadrant of the DFW area, consistent with the 5 monitors listed above. Therefore, the 2017 FDVs are properly capturing the geographic locations of the monitored peaks and no significant hotspots were identified that need to be further addressed.

For a more complete description of the modeling attainment test procedures and conclusions and EPA's evaluation of these procedures and conclusions, see the MOAAD TSD in the Docket for this action.

7. What are EPA's conclusions of the modeling demonstration?

EPA has reviewed the modeling and modeling results and finds they meet 40 CFR part 51 requirements. The modeling using the 2014 Draft A.D. Guidance indicates that 17 out of 19 of the monitors are projected to be in attainment in 2017 while two monitors have 2017 FDVs just above the 2008 8-hour Ozone NAAQS (75 ppb). EPA concludes that the modeling results are within the range [11] where EPA

[10] A model value of 75.99 would be truncated to 75 ppb.

[11] 2007 A.D. Guidance indicated within 2–3 ppb for the 1997 8-hour 85 ppb standard and the 2014 Draft A. D. Guidance indicated the model results should be close to the standard without giving an exact range. The two values over with the 2014 Draft A.D. Guidance are just 1 ppb over the standard and EPA considers this be within the range of 'close' as indicated by the guidance (2014

recommends Weight of Evidence (WOE) be considered to determine if the attainment demonstration is approvable.

8. Weight of Evidence (WOE)

a. Background

Both EPA's 2007 A.D. and 2014 Draft A.D. guidance documents recommend that in addition to a modeling demonstration, the states include WOE when the modeling results in FDVs are close to the standard. EPA's 2007 A.D. and 2014 Draft A.D. guidance documents both discuss additional relevant information that may be considered as WOE. The 2007 A.D. Guidance that was developed for the 1997 8-hour ozone standard of 85 ppb standard had a range of 82–87 ppb where a WOE analysis was recommended to support the attainment test. Applying that guidance's general principle to the 2008 8-hour ozone standard of 75 ppb, the DFW FDVs fall within the 2–3 ppb range of that guidance where WOE should also be considered. The 2014 Draft A.D. Guidance does not set a range but indicates that the FDVs should be close to the standard to use WOE, and EPA considers these 2017 FDVs to be very close to the standard (less than 1 ppb in both guidance cases).

A WOE analysis provides additional scientific analyses as to whether the proposed control strategy, although not modeling attainment, demonstrates attainment by the attainment date. The intent of EPA's guidance is to utilize the WOE analysis to consider potential uncertainty in the modeling system and future year projections. Thus, in the DFW case, even though the modeling predicts two out of 19 monitors have FDVs that are 1 ppb above the NAAQS, additional information (WOE) can provide a basis to conclude attainment is demonstrated. EPA's guidance indicates that several items should be included in a WOE analyses, including the following: Additional modeling, additional reductions not modeled, recent emissions and monitoring trends, known uncertainties in the modeling and/or emission projections, and other pertinent scientific evaluations. Pursuant to EPA's guidance, TCEQ supplemented the control strategy modeling with WOE analyses.

We briefly discuss the more significant components of the WOE that impacted EPA's evaluation of the attainment demonstration in this action. Many other elements are discussed in the MOAAD TSD. For EPA's complete evaluation of the WOE considered for this action, see the MOAAD TSD.

b. What additional modeling-based evidence did Texas provide?

Texas submitted a significant body of information as WOE in the August 5, 2016 submittal. The Texas attainment demonstration modeling discussed above included a model sensitivity run with different Texas EGU emission levels to indicate how slight changes in Texas EGU NO_X emission budgets would impact projected 2017 FDVs in the DFW area. Texas increased the SIP modeling TX EGU emissions that are based on Cross State Air Pollution Rule (CSAPR) [12] [13] by 2.75% using the older Texas EGU ozone season NO_X budget and source allocations from the Clean Air Interstate Rule (CAIR).[14] This slight increase in EGU NO_X emissions resulted in a small increase of the FDV of 0.08 ppb at the Denton monitor. TCEQ conducted this sensitivity analysis in 2015, prior to EPA finalizing the CSAPR Update Budget for the 2008 ozone standard.[15] EPA has evaluated the new CSAPR Update Texas EGU ozone season NO_X budget which results in a 20% decrease in emissions compared to the previous CSAPR budget that was included in the attainment modeling. The CSAPR Update required compliance with the new budget starting in May 1, 2017 which is the start of the core period of DFW ozone season. While these reductions were not modeled by TCEQ and occur after the start of the DFW ozone season, based on TCEQ's sensitivity modeling we would expect these EGU NO_X reductions to result in lower ozone levels at DFW monitors during the core DFW ozone season of May through September and provide positive WOE.

TCEQ also used a modeling concept that tracks the ozone generated in the modeling from ozone precursors by location and category of type of emission source that is referred to as using source apportionment.[16] For 2017 and 2018, TCEQ performed source apportionment modeling using the Anthropogenic Precursor Culpability Assessment (APCA) tool.[17] On the 10 highest days at each monitor, the APCA indicated that DFW sources contribute more on the 10 highest days. For these 10 highest days at the downwind monitors of Denton and Eagle Mountain Lake, the amount of ozone at the monitor due to emissions from local DFW sources was often in the 25–35 ppb range and combination of all Texas sources (DFW and rest of Texas) was often 33–43 ppb. This source apportionment indicates that on the worst days in the DFW area, local emission reductions and reductions within Texas are more beneficial than on other baseline exceedance days. This adds a positive WOE that DFW area reductions in mobile on-road and non-road categories as well as other categories aid in demonstrating attainment. When we say positive WOE, EPA is indicating that the WOE element factors more into supporting the demonstration of attainment. For EPA's complete evaluation of the modeled WOE elements considered for this action, see the MOAAD TSD.

c. Other Non-Modeling WOE

TCEQ showed that 8-hour and 1-Hour ozone DVs have decreased over the past 18 years, based on monitoring data in the DFW Area (1997 through 2014). TCEQ indicated that the 2015 8-hour ozone DV for the DFW nonattainment area is 83 ppb at Denton Airport South, which is in attainment of the former 8-hour standard (85 ppb) and demonstrates progress toward the current 75 ppb standard.

TCEQ's trend line for the 1-Hour ozone DV shows a decrease of about 2.1 ppb per year, and the trend line for the 8-hour ozone DV shows a decrease of about 1.1 ppb per year. The 1-Hour ozone DVs decreased about 27% from 1997 through 2014 and the 8-hour ozone DVs decreased about 21% over that same time. This is positive WOE that supports the demonstration of attainment.

EPA has also supplemented TCEQ's monitoring data analysis with more recent 2014–2016 and preliminary 2017 monitoring data [18] (See Tables 3 and 4).

Draft A.D. Guidance page 190 ''In conclusion, the basic criteria required for an attainment demonstration based on weight of evidence are as follows: (1) A fully-evaluated, high-quality modeling analysis that projects future values that are close to the NAAQS.''

[12] Cross State Air Pollution Rule (CSAPR) **Federal Register**, 76 FR 48208 (July 6, 2011) and **Federal Register**, **Federal Register**, 76 FR 80760 (December 15, 2011).

[13] See Sections Section 3.5.4; 3.7.4 Future Case Modeling Sensitivities; 3.7.4.1 2017 Clean Air Interstate Rule (CAIR) Phase II Sensitivity; 5.4.1.3 of the State's August 5, 2016 SIP submittal.

[14] Clean Air Interstate Rule (CAIR) **Federal Register**, 70 FR 25162 (May 21, 2005).

[15] Cross State Air Pollution Rule Update for the 2008 Ozone NAAQS **Federal Register**, 81 FR 74504 (October 26, 2016).

[16] Source apportionment allows the tracking of ozone generation from regions (such as upwind states or the DFW NA, etc.) and also by source category (such as on-road, nonroad, EGU, point sources, etc.).

[17] See 3.7.3 of the State's August 5, 2016 SIP submittal.

[18] The 2017 monitoring data is preliminary and still has to undergo Quality Assurance/Quality Control analysis and be certified by the State of Texas, submitted to EPA, and reviewed and concurred on by EPA.

The Denton monitor is located to the north-northwest of the DFW nonattainment area, which is downwind of the urban core and has been the highest DV monitor in DFW and has been setting the DFW NAA DV for the 2014 to 2016 years (and preliminarily in 2017) as the monitor with the highest measured DV. The 2016 DV (2014–2016 data) data indicates that only two monitors had a DV above the standard (Denton—80 ppb and Pilot Point 76 ppb). Current preliminary 2015–2017 DV data indicates that only one of the nineteen monitors in the DFW area may be above the standard with a preliminary 2017 DV of 79 at Denton.[19]

The monitored DV is calculated by averaging the 4th High values from three consecutive years and truncating to integer (whole number) level in ppb. For example, the 2016 DV is the average of 4th Highs from 2014–2016. The DV calculations can be driven by one high year (2015 in this case) so, for WOE purposes, we can also look at the 4th High 8-hour values for each recent year.

Overall as seen in Table 3 and 4 below, 2015 stands out with high ozone monitored data compared to other recent years (2014, 2016 and preliminary 2017). These 4th High 8-hour values support that the area with recent emission levels has been close to attaining the standard for several years. The high 2015 4th High 8-hour data is driving all the DVs for 2015, 2016, and preliminary 2017. Despite the high 2015 4th High 8-hour data that contributed to higher 2015, 2016, and preliminary 2017 DV values, examination of the 4th High 8-hour values for 2014, 2016 and preliminary 2017, support the finding that the general long-term trend identified by TCEQ of a steady reduction in DV should continue.

To assess what might have occurred if 2015 had not been such a high year we have calculated the average of the last two years (2016 and preliminary 2017) 4th Highs, and all monitors have values that are 1 ppb or more below the standard (values are 74.5 ppb or less).[20] Both the individual 4th High monitoring data from 2014, 2016, and 2017 and the average of the 2016 and preliminary 2017 data are some of the strongest, positive WOE. The ozone data indicates that emission levels in DFW NAA and the meteorology that occurred in 2014, 2016, and 2017 have led to ozone levels that are consistent with attainment of the NAAQS. Overall, with the exception of the high 2015 data, the recent monitoring data provides a strong positive WOE that supports the demonstration of attainment.

TABLE 3—DFW AREA MONITORS DVS

[2014–2017] [1]

	2014 (ppb)	2015 (ppb)	2016 (ppb)	2017 [1] (ppb)	2016–2017 [1] (2 year avg.)
Denton Co. Airport	81	83	80	79	74.5
Pilot Point	79	79	76	74	71.5
Nuestra (North Dallas)	77	75	72	74	72
Hinton	78	75	71	74	72
Executive	74	68	64	64	62.5
Keller	77	76	73	73	72.5
Meacham	80	80	74	72	69.5
Arlington	75	67	65	67	66
Eagle Mt. Lake	79	76	72	71	68.5
Grapevine	80	78	75	75	74
Frisco	78	76	74	74	72.5
Italy	67	66	62	64	63
Midlothian Downwind	71	68	63	65	63.5
Granbury	76	73	69	67	64.5
Cleburne	76	73	72	73	73.5
Kaufman	70	67	61	61	59.5
Parker Co	74	75	73	70	66.5
Rockwall	73	70	66	66	64
Greenville	69	64	60	62	62

[1] 2017 DV and 4th High 8-hour values are preliminary data.

TABLE 4—DFW AREA MONITORS 4TH HIGH 8-HOUR VALUES

[2014–2017] [1]

	2014 (ppb)	2015 (ppb)	2016 (ppb)	2017 [1] (ppb)
Denton Co. Airport	77	88	76	73
Pilot Point	75	79	75	68
Nuestra (North Dallas)	70	79	67	77
Hinton	66	80	69	75
Executive	63	68	62	63
Keller	74	76	70	75
Meacham	79	79	66	73
Arlington	65	69	61	71

[19] Any determination of whether the DFW ozone nonattainment area has attained by the applicable attainment date is a separate analysis that will be part of a separate EPA rulemaking. This rulemaking is focused on whether the State's submitted attainment demonstration is approvable under CAA standards. EPA is not in a position at this time to determine whether the DFW area has attained by the applicable attainment date, given that that the attainment date has not yet passed and the 2017 monitoring data is still preliminary.

[20] When calculating a DV, the three consecutive years 4th highs are averaged and then truncated. For this discussion consider a hypothetical example of a monitor with 4th High values of 75 ppb, 76 ppb, and 76 ppb that would average to 75.67 and then be truncated to 75 ppb and be in attainment of the 75 ppb NAAQS. Therefore, the non-truncated value of the 2-year avg.74.5 ppb at the Denton monitor is over 1 ppb lower than 75.67 ppb.

TABLE 4—DFW AREA MONITORS 4TH HIGH 8-HOUR VALUES—Continued

[2014–2017] [1]

	2014 (ppb)	2015 (ppb)	2016 (ppb)	2017 [1] (ppb)
Eagle Mt. Lake	73	78	67	70
Grapevine	73	79	75	73
Frisco	74	77	73	72
Italy	60	66	60	66
Midlothian Downwind	62	68	60	67
Granbury	73	73	63	66
Cleburne	71	73	72	75
Kaufman	62	64	57	62
Parker Co	72	79	68	65
Rockwall	66	71	61	67
Greenville	62	62	58	66

[1] 2017 4th High 8-hour values are preliminary data.

TCEQ also submitted WOE components that are further discussed in the MOAAD TSD including the following: Conceptual model and selection of the 2006 period to fit the range of days and synoptic cycles that yield high ozone in DFW, additional ozone design value trends, ozone variability analysis and trends, NO^X and VOC monitoring trends, emission trends, NO_X and VOC chemistry limitation analysis, and local contribution analyses. Details of these WOE components that also provide positive WOE are included in Chapter 5 of the August 5, 2016 SIP submittal and discussed in the MOAAD TSD.

d. Other WOE Items From Texas Not Currently Quantified With Modeling: Additional Programs/Reductions, etc.

CEMENT KILNS—TCEQ also noted that the modeling for the Cement Kilns in Ellis County was based on a NO_X cap of 17.64 tons per day when actual NO_X emissions have been less than 10 tons per day. The modeling of the kiln emissions in the 2017 future year modeling is high compared to actuals and even new permitted limits and provides positive WOE. EPA's guidance in this case recommends the cap limits be modeled. The fact that the three kilns have not operated at their cap, two of the kilns have shut down and the shut downs are permeant and enforceable, and the third kiln through reconstruction has lower emissions, and the NO_X reductions at Ash Grove (NO_X permitted reduction of 2.45 tons per day) provide positive WOE.

DFW AREA EMISSION REDUCTION CREDITS (ERC) AND DISCRETE EMISSION REDUCTION CREDITS (DERC)—TCEQ indicated that they modeled the DFW area ERCs and DERCs in the 2017 future year modeling and this is conservative as it is unlikely that all these credits would be used in one year. EPA agrees it might be conservative, but including the ERCs and DERCs in the future year 2017 modeling is consistent with EPA's guidance.[21] EPA guidance calls for emission credits that are being carried in the emissions bank to be included in modeled projections because these emissions will come back in the air when and if the credits are used and without any clear limit on annual usage it cannot be clearly demonstrated that all the ERC/DERCs will not be used in the 2017 future year. It does provide positive WOE.

TEXAS EMISSION REDUCTION PLAN (TERP)—The TERP program provides financial incentives to eligible individuals, businesses, or local governments to reduce emissions from polluting vehicles and equipment. In 2015, the Texas Legislature increased funding for TERP to $118.1 million per year for FY 2016 and 2017, which was an increase of $40.5 million per year which resulted in more grant projects in eligible TERP areas, including the DFW area. Texas also noted that since the inception of TERP in 2001 through August 2015, over $968 million dollars have been spent within the state through TERP and the Diesel Emission Reduction Incentive Program (DERI) that has resulted in 168,289 tons of NO_X reductions in Texas by 2015. TCEQ also noted that over $327 million in DERI grants have been awarded to projects in the DFW area through 2015 resulting with a projected NO_X reduction of 58,062 tons that is also estimated as 18.7 tons per day of NO_X. These DERI and TERP benefits were not modeled but the reductions and future reductions do provide positive WOE.

LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM (LIRAP)—TCEQ established a financial assistance program for qualified owners of vehicles that fail the emissions test. The purpose of this voluntary program is to repair or remove older, higher emitting vehicles from use in certain counties with high ozone. The counties currently participating in the LIRAP include, but are not limited to Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant. In DFW NAA between December 12, 2007 and February 29, 2016, the program repaired 39,379 vehicles at a cost of $20.894 million and retired and replaced 55,807 vehicles at a cost of $167.629 million. Participating DFW area counties were allocated approximately $21.6 million per year for the LIRAP for FYs 2016 and 2017. This is an increase of approximately $18.8 million per year over the previous biennium. These LIRAP benefits were not modeled but the reductions and future reductions do provide positive WOE.

LOCAL INITIATIVE PROJECTS (LIP)—Funds are provided to counties participating in the LIP for implementation of air quality improvement strategies through local projects and initiatives (*Examples:* Studies on emissions inspection fraud and targeting high emission vehicles). The 2016 and 2017 state budgets included increases of approximately $2.1 million per year over previous biennium. These LIP benefits were not modeled but the reductions and future reductions do provide positive WOE.

LOCAL INITIATIVES—The North Central Texas Council of Governments (NCTCOG) submitted an assortment of locally implemented strategies in the DFW nonattainment area including pilot programs, new programs, or programs with pending methodologies. These Local Initiatives benefits were not

[21] See sections 12 and 16 of ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001).

modeled but the reductions and future reductions do provide positive WOE.

ENERGY EFFICIENCY/RENEWABLE ENERGY (EE/RE) MEASURES—Additional quantified and unquantified WOE emissions reductions (without NO_X reductions calculated) include a number of energy efficiency measures (Residential and Commercial Building Codes, municipality purchase of renewable energies, political subdivision projects, electric utility sponsored programs, Federal facilities EE/RE Projects, etc.). These efforts are not easily quantifiable for an equivalent amount of NO_X reductions that may occur, but they do provide positive WOE that growth in electrical demand is reduced and this results in reduced NO_X emissions from EGUs.

VOLUNTARY MEASURES—While the oil and natural gas industry is required to install controls either due to State or Federal requirements, the oil and natural gas industry has in some instances voluntarily implemented additional controls and practices to reduce VOC emissions from oil and natural gas operations in the DFW nonattainment area as well as other areas of the state. Since these are voluntary measures and reporting/verification is not a requirement these efforts are not easily quantifiable from an equivalent amount of NO_X and VOC reductions that may occur, but they do provide positive WOE that emissions from oil and gas development which is beneficial to lowering ozone formation from this sector.

9. Is the 8-hour attainment demonstration approvable?

Consistent with EPA's regulations at 40 CFR 51.1108(c), Texas submitted a modeled attainment demonstration based on a photochemical grid modeling evaluation. EPA has reviewed the components of TCEQ's photochemical modeling demonstration and finds the analysis is consistent with EPA's guidance and meets 40 CFR part 51, including 40 CFR part 51 Appendix W—Guideline on Air Quality Models. The photochemical modeling was conducted to project 2017 ozone levels in order to demonstrate attainment of the standard by the attainment date. Although the modeled attainment test is not fully met and two of the 19 DFW monitors were projected to be slightly above the standard (less than 1 ppb), consistent with our A.D. guidance, TCEQ submitted a WOE analysis. This WOE analysis provides additional scientific analyses based on identification of emission reductions not captured in the modeling, monitoring trends and recent monitoring data (EPA included more recent monitoring data since the SIP submission) and other modeling analyses. The combination of the modeling and the WOE demonstrate attainment by the attainment date. We are therefore proposing to approve the attainment demonstration submitted August 5, 2016.

B. Review of Other Plan Requirements

1. Emissions Inventory (EI)

An emissions inventory is a comprehensive, accurate, and current inventory of actual emissions from all relevant sources of pollutants in the NAA. It is required by sections 172(c)(3) and 182(a)(1) of the CAA that nonattainment plan provisions include an inventory of NO_X and VOC emissions from all sources in the nonattainment area. EPA previously approved SIP revisions to the emissions inventory for the DFW moderate nonattainment area for the 2008 ozone NAAQS. See 81 FR 88124 (December 7, 2016).

2. Nonattainment New Source Review (NNSR)

The EPA approved the NNSR permitting program for the DFW NAA under the 2008 ozone NAAQS at 82 FR 27122 (June 14, 2017). All NNSR programs have to require (1) the installation of the lowest achievable emission rate, (2) emission offsets, and (3) opportunity for public involvement.

3. Motor Vehicle Inspection and Maintenance (I/M)

The EPA approved a State SIP revision for the 2008 8-hour ozone NAAQS requirements for vehicle I/M. See 82 FR 27122 (June 14, 2017).

4. Reasonable Further Progress (RFP)

On July 10, 2015, the TCEQ submitted a RFP SIP revision (supplemented on April 22, 2016) to the EPA. For the 2008 ozone NAAQS, the EPA fully approved the DFW moderate nonattainment area RFP SIP revision, the associated contingency measures, and the 2017 RFP Attainment Motor Vehicle Emission Budgets (MVEBs) on December 7, 2016 (81 FR 88124).

5. Reasonably Available Control Technology (RACT)

Section 182(b)(2) of the Act requires states to submit a SIP revision and implement RACT for major stationary sources in moderate and above ozone nonattainment areas. Based on the moderate classification of the DFW NAA for the 2008 ozone standard, a major stationary source is one that emits, or has the potential to emit, 100 tpy or more of NO_X or VOC. The EPA approved revisions to the State's SIP that revised rules for control of VOC to assist the DFW NAA in attaining the 2008 8-hour ozone NAAQS and that demonstrates that the VOC RACT requirements are met for the DFW NAA. The approval includes Wise County, a county previously added in the 2008 ozone designations, as part of the DFW moderate NAA. We approved the submitted NO_X rules (that included Wise County) to assist the DFW NAA in attaining the 2008 8-hour ozone NAAQS and then we approved the NO_X RACT demonstration as part of the DFW moderate NAA SIPs but for one affected source.[22] Our actions on the RACT for NO_X and VOC for the DFW NAA are found at 82 FR 44320 and 82 FR 60546.

6. Reasonably Available Control Measures (RACM)

The RACM requirement applies to all nonattainment areas that are required to submit an attainment demonstration. Section 172(c)(1) of the Act requires SIPs to provide for the implementation of all RACM as expeditiously as practicable and for attainment of the standard. EPA interpreted the RACM requirements of 172(c)(1) in the General Preamble to the Act's 1990 Amendments (April 16, 1992, 57 FR 13498) as imposing a duty on states to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the particular nonattainment area. EPA also issued a memorandum reaffirming its position on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John S. Seitz, Director, Office of Air Quality Planning and Standards, dated November 30, 1999. In addition, measures available for implementation in the nonattainment area that could not be implemented on a schedule that would advance the attainment date in the area would not be considered by EPA as reasonable to require for implementation. EPA indicated that a State could reject certain measures as not reasonably available for various reasons related to local conditions. A state could include area-specific reasons for rejecting a measure as RACM, such as the measure would not advance the attainment date,

[22] As a separate requirement of the Act, the State must demonstrate that the revised VOC and NO_X control strategies meet RACT. Again, we previously approved VOC RACT for the DFW NAA under the 2008 ozone NAAQS: NO_X RACT was approved for all but one affected source which was conditionally approved September 22, 2017 at 82 FR 44320 and the VOC RACT was approved at 82 FR 60546.

or was not technologically or economically feasible. Although EPA encourages areas to implement available RACM measures as potentially cost-effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the area to achieve attainment in advance of full implementation of all other required measures.

The TCEQ provided the DFW RACM analysis in Appendix G of the SIP submittal. Texas evaluated control strategies for NO_X and VOC emissions, from area, point and mobile (on-road and non-road) sources. The candidate strategies were identified by reviewing existing control strategies, existing sources of NO_X and VOC in the DFW NAA, and input from stakeholders (full list of measures is provided in Appendix G of the SIP submittal). As discussed in Chapter 5 of the SIP submittal and in Appendix D (Conceptual Model for the DFW Attainment Demonstration SIP Revision for the 2008 Eight-Hour Ozone Standard), sensitivity analyses and the photochemical modeling indicate that in the DFW NAA ozone is more responsive to NO_X reductions than VOC reductions. Many measures to reduce VOCs are already in place, through state and Federal mobile source programs, including recently approved VOC rules in Wise County (82 FR 60546). Based on previous modeling by TCEQ and the EPA, only large reductions of VOC emissions, on the order of 100 tons per day of typical VOCs, would advance the attainment date in DFW. We were unable to identify any additional available evaluated measures that cumulatively would provide 100 tons per day in VOC emissions reductions and thus, advance the attainment date for the DFW area. For more detail, see the Moderate Nonattainment Area TSD (MNA TSD).

The majority of NO_X emissions in the DFW NAA come from mobile sources and industrial processes; emissions of NO_X have been reduced to a large extent with controls on stationary sources and improved mobile source programs. In addition, the State extended its NO_X RACT rules that were already in place to include Wise County (81 FR 21747). For more detail, see the MNA TSD.

We also reviewed whether there were additional available strategies to reduce NO_X emissions from mobile sources. Our analysis showed that the State SIP already has in place Transportation Control Measures (TCMs), Voluntary Mobile Emissions Program (VMEP), Texas Emissions Reductions Plan (TERP), and a motor vehicle I/M program that EPA has previously approved. Several of the measures in Appendix G are already covered under the TCMs, VMEP, TERP programs and several other local measures are being implemented at the airports and by various cities and others within the DFW NAA.

In order to advance attainment by a year (*i.e.,* by July 20, 2017), the State would have to implement any additional control measures needed for attainment by the beginning of the 2016 ozone season, *i.e.,* by March 1, 2016.[23] While the State was able to revise the SIP with the new attainment date, its review and analysis of additional RACM measures did not result in a finding that any additional measures could be adopted and implemented by March 1, 2016 in order to advance the attainment date. Based on the RACM analysis, the TCEQ determined that no potential control measures met the criteria to be considered RACM. All potential control measures evaluated for stationary sources were determined not to be RACM due to technological or economic feasibility, enforceability, adverse impacts, or ability of the measure to advance attainment of the NAAQS. In general, the State cited to the inability to advance attainment as the primary determining factor in the RACM analyses. Because there are no measures that could have been adopted and implemented by a date that has now passed, we believe the State properly concluded that additional measures are not RACM.

EPA interprets the Act's RACM requirement to mean that a measure is not RACM if it would not advance the attainment date (57 FR 13498, 13560). This interpretation has been upheld. See *Sierra Club* v. *EPA*, 294 F.3d 155 (D.C. Cir. 2002) and *Sierra Club* v. *United States EPA*, 314 F.3d 735 (5th Cir. 2002). A state must consider all potentially available measures to determine whether they are reasonably available for implementation in the area, and whether they would advance the area's attainment date. The state may reject measures as not meeting RACM, however, if they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible. Additionally, potential measures requiring intensive and costly implementation efforts are not RACM. *Sierra Club* v. *EPA* at 162–163 (D.C. Cir. 2002); *Sierra Club* v. *EPA*, 314 F.3d 735 (5th Cir. 2002); *BCCA Appeal Group* v. *EPA*, 355 F.3d 817 (5th Cir. 2003). To demonstrate measures that advance attainment of the ozone standard, the emission reductions from the measures must occur no later than the start of the 2016 ozone season—*i.e.,* by March 1, 2016, in order to advance attainment. Because there are no measures that could have been adopted and implemented by a date that has now passed, we believe it is appropriate to conclude that additional measures are not RACM. EPA expects States to prepare a reasoned justification for rejection of any available control measure. The resulting available control measures should then be evaluated for reasonableness considering their technical and economic feasibility, and whether they will advance attainment. In the case of the DFW SIP, TCEQ performed an analysis to determine whether all RACM were included in the SIP. The Fifth Circuit in *Sierra Club* v. *EPA*, 314 F.3d 735, 745 (5th Cir. 2002) impressed upon EPA the duty to (1) demonstrate that it has examined relevant data, and (2) provide a satisfactory explanation for its rejection of a proposed RACM and why the proposed RACM, individually and in combination, would not advance the area's attainment date. See Ober, 243 F.3d at 1195 (quoting *American Lung Ass'n* v. *EPA*, 134 F.3d 388, 392–93 (D.C. Cir. 1998)). EPA reviewed the State's RACM analysis and believes that the State has included sufficient documentation concerning the rejection of the available measures as RACM for the DFW NAA. Further information is found in the MNA TSD on why we agree with the State that no additional measures are RACM for the DFW area and therefore the RACM requirement of the Act is met.

We propose that any other available evaluated measures are not reasonably available for the DFW NAA, because they are either economically or technically infeasible, or would not produce emissions reductions sufficient to advance the attainment date in the DFW NAA and therefore, should not be considered RACM.

7. Attainment Motor Vehicle Emission Budgets (MVEBs)

The ozone attainment demonstration SIP must include MVEBs for transportation conformity purposes. Conformity to a SIP means that transportation activities will not produce new air quality violations,

[23] EPA signed a final rule on February 13, 2015 that finalized the revised 2008 ozone attainment dates. (See 80 FR 12264 (March 6, 2015).

worsen existing violations, or delay timely attainment of the NAAQS. It is a process required by section 176(c) of the Act for ensuring that the effects of emissions from all on-road sources are consistent with attainment of the standard. EPA's transportation conformity rules at 40 CFR 93 require that transportation plans and related projects result in emissions that do not exceed the MVEB established in the SIP. The attainment year established in the DFW ozone attainment demonstration SIP is the calendar year of the final ozone season for determining attainment, which is 2017. See 40 CFR 93.118(b).

The attainment MVEB is the level of total allowable on-road emissions established by the control strategy implementation plan. Ozone attainment demonstrations must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with attainment, which then act as a ceiling for the purposes of determining whether transportation plans, programs, and projects conform to the attainment demonstration SIP. In this case, the attainment MVEBs set the maximum level of on-road emissions that can be produced in 2017, when considered with emissions from all other sources, which demonstrate attainment of the 2008 ozone NAAQS.

The 2017 attainment MVEBs established by this plan and that the EPA is proposing to incorporate into the DFW SIP are listed in Table 12:

TABLE 12—2017 DFW ATTAINMENT MOTOR VEHICLE EMISSIONS BUDGETS (TONS PER DAY)

Pollutant	2017
NO_X	130.77
VOC	64.91

We found the 2017 attainment MVEBs (also termed transportation conformity budgets) ''adequate'' and on September 7, 2016, the availability of these budgets was posted on EPA's website for the purpose of soliciting public comments. The comment period closed on October 6, 2016, and we received no comments. On November 8, 2016, we published the Notice of Adequacy Determination for these attainment MVEBs (81 FR 78591). Once determined adequate, these attainment MVEBs must be used in future DFW transportation conformity determinations.

The attainment budget represents the on-road mobile source emissions that have been modeled for the attainment demonstration. The budget reflects all of the on-road control measures in that demonstration. We believe that the MVEBs are consistent with all applicable SIP requirements and thus are proposing to approve the 2017 attainment MVEBs into the DFW ozone attainment demonstration SIP. All future transportation improvement programs, projects and plans for the DFW NAA will need to show conformity to the budgets in this plan.

8. Contingency Measures Plan

The general requirements for ozone nonattainment plans under CAA section 172(c)(9) specify that each nonattainment plan must contain additional measures that will take effect without further action by the State or EPA if an area fails to attain the standard by the applicable date.[24] The Act does not specify the type of measures, quantity of emissions reductions required, or how many contingency measures are needed and thus, EPA has interpreted sections 172 and 182 of the Act in the General Preamble (57 FR 13498, 13510) to require states with moderate or above ozone NAAs to include sufficient contingency measures so that, upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory would be achieved in the year following the year in which the failure has been identified. These could include federal measures and local measures already scheduled for implementation, since the CAA does not preclude a state from implementing such measures before they are triggered. EPA based the 3% recommendation in the General Preamble on the fact that moderate and above areas are generally required through the Rate of Progress (ROP)/RFP requirements to achieve an average of 3% reduction per year until they attain the NAAQS. The state must specify the type of contingency measures and the quantity of emissions reductions and show that the measures can be implemented with no further rulemaking and minimal further action by the State. See the MNA TSD for a list of applicable guidance documents.

The State submittal includes a contingency measures plan consisting of the emission reductions from the additional fleet turnover due to the Federal Motor Vehicle Control Program and Federal non-road mobile new vehicle certification standards. These measures provide NO_X emission reductions that are in excess of 3 percent of the NO_X emissions in the adjusted base year inventory.[25] See our MNA TSD for more detail. The fleet turnover measure is a Federal rule and as such is enforceable by the EPA, the State and the public. This proposed approval action would make the specified measures' projected SIP credits enforceable by the EPA and the public.

All specified measures are surplus to the reductions in the attainment demonstration. Finally, the measures are considered permanent because they continue for as long as the period in which they are used in the failure-to-attain contingency measures plan. See the MNA TSD for additional detail.

C. CAA Section 110(l) Analysis

Section 110(l) of the CAA precludes EPA from approving a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and RFP (as defined in section 171 of the Act), or any other applicable requirement of the CAA. This action proposes approval of a plan that demonstrates that already adopted measures both Federal or State will provide levels of emissions consistent with attaining the ozone NAAQS. Since it is a demonstration, it will not interfere with any other requirement of the Act. Also in this action, we are proposing to approve the attainment MVEBs, which are lower than the previously approved MVEBs for RFP (81 FR 88124), and the contingency measures plan. The lower attainment demonstration MVEBs and on-going emission reductions through the contingency measures plan both provide progress toward attainment and as such do not interfere with any applicable requirement of the Act.

III. Proposed Action

We are proposing to approve the August 5, 2016 2008 8-hour ozone modeling and WOE submitted by the State of Texas because it demonstrates attainment by the attainment date. We also are proposing to approve the RACM analysis, the contingency measures plan in the event of failure to attain the NAAQS by the applicable attainment date, and the associated Motor Vehicle

[24] These provisions do not apply to Marginal NAAs (see section 182(a) of the CAA).

[25] The CAA does not preclude a state from implementing such measures before they are triggered. In *Louisiana Envtl. Action Network* v. *EPA,* 382 F.3d 575 (5th Cir. 2004), the Fifth Circuit held that Clean Air Act § 7502(c)(9) was ambiguous because it ''neither affirms nor prohibits continuing emissions reductions—measures which originate prior to the SIP failing, but whose effects continue to manifest an effect after the plan fails—from being utilized as a contingency measure.'' The Court agreed with EPA's interpretation that ''contingency measures'' could include measures that had already been implemented by a state.

Emissions Budgets (MVEBs) for 2017. Finally, we are proposing approval of the use of TATU's tool and its Unmonitored Area analysis as acceptable for meeting the recommended evaluation of ozone levels in the Unmonitored Area analysis for this SIP proposed approval action.

IV. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: April 25, 2018.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018–09313 Filed 5–2–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0104; FRL–9977–33–Region 9]

Approval of California Air Plan Revisions, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Yolo-Solano Air Quality Management District (YSAQMD or ''District'') portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from architectural coatings. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 4, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0104 at *http://www.regulations.gov,* or via email to Arnold Lazarus, at *lazarus.arnold@epa.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, 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, 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: Arnold Lazarus, EPA Region IX, (415) 972 3024, *Lazarus.Arnold@epa.gov*.

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that the revision was adopted by the YSAQMD and the date that it was submitted by the California Air Resources Board (CARB) to the EPA.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Revised	Submitted
YSAQMD	2.14	Architectural Coatings	10/12/2016	01/24/2017

On April 17, 2017, the EPA determined that the submittal for YSAQMD Rule 2.14 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

On January 2, 2004 (69 FR 34), the EPA finalized a limited approval and limited disapproval of a previous submission of Rule 2.14 with no sanctions because the part of the rule that was disapproved, ''Appendix A,'' expired by its own terms on January 1, 2005. For additional information, please see the technical support document (TSD) for today's rulemaking.

C. What is the purpose of the submitted rule revisions?

VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Architectural coatings are coatings that are applied to stationary structures and their accessories. They include house paints, stains, industrial maintenance coatings, traffic coatings, and many other products. VOCs are emitted from the coatings during application and curing, and from the associated solvents used for thinning and clean-up.

YSAQMD Rule 2.14 controls VOC emissions from architectural coatings by establishing VOC limits on architectural coatings supplied, sold, offered for sale, manufactured, blended, or repackaged for use within the YSAQMD, as well as architectural coatings applied or solicited for application within the District. The revisions to Rule 2.14 include the elimination of the averaging provision, which was the basis for the EPA's 2004 limited disapproval of a prior version of this rule, and the tightening of many of the Rule's VOC limits. The TSD has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document, and each major source of VOCs in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)). The YSAQMD regulates an ozone nonattainment area classified as severe nonattainment for the 2008 and the 1997 8-hour ozone National Ambient Air Quality Standards (40 CFR 81.305).

Because there is no relevant EPA CTG document and because there are no major architectural coating sources within the District, architectural coatings are not subject to RACT requirements. However, architectural coatings are subject to other VOC content limits and control measures described in the TSD.

Guidance and policy documents that we used to evaluate the enforceability, revision/relaxation, and stringency requirements for this rule include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (57 FR 13498, April 16, 1992 and 57 FR 18070, April 28, 1992).

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations'' (''the Bluebook,'' U.S. EPA, May 25, 1988; revised January 11, 1990).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies'' (''the Little Bluebook,'' EPA Region 9, August 21, 2001).

4. National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59, Subpart D.

5. CARB ''Suggested Control Measure for Architectural Coatings,'' Approved 2007.

6. YSAQMD Rule 2.14, ''Architectural Coatings,'' EPA Limited Approval and Limited Disapproval on January 2, 2004 (69 FR 34).

B. Does the rule meet the evaluation criteria?

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, stringency, and SIP revisions. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until June 4, 2018. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the YSAQMD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: April 18, 2018.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–09213 Filed 5–2–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0100; FRL–9977–53–Region 5]

Air Plan Approval; Michigan; Revisions to Part 9 Miscellaneous Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request submitted by the Michigan Department of Environmental Quality (MDEQ) on February 2, 2017, and supplemented on November 8, 2017, to revise the Michigan state implementation plan (SIP) for carbon monoxide (CO). The revision incorporates changes to Michigan's Air Pollution Control Rules entitled ''Emissions Limitations and Prohibitions—Miscellaneous.'' The revision updates existing source-specific rule requirements for ferrous cupola operations by removing obsolete rule language and makes a minor change to correct the citation to a Federal test method. The revision continues to result in attainment of the CO national ambient air quality standard (NAAQS).

DATES: Comments must be received on or before June 4, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0100 at *http://www.regulations.gov* or via email to *blakley.pamela@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: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3031, *hatten.charles@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. What are the State rule revisions?

On February 2, 2017, MDEQ submitted a request to incorporate revisions to Michigan's Air Pollution Control Rules in Chapter 336, Part 9—Emissions Limitations and Prohibitions—Miscellaneous (Part 9) in the Michigan SIP. Michigan's submittal included revisions to three separate rules in Part 9: R 336.1902—''Adoption of standards by reference'' (rule 902); R 336.1916—''Affirmative defense for excess emissions during start-up or shutdown'' (rule 916); and R 336.1930—''Emission of carbon monoxide from ferrous cupola operations'' (rule 930). This rule will only take action on rule 930, while the revisions to rule 902 and 916 will be addressed separately.

Michigan's rule 930 specifies CO emission limits for large ferrous cupola operations with a melting capacity of 20 tons or more per hour. The version of rule 930 currently approved into the Michigan SIP only applies to ferrous cupola operations in Saginaw, Macomb, Oakland, and Wayne Counties in Michigan.[1] The rule is designed to require installation of afterburner control system, or equivalent, which reduces the CO emissions from the ferrous cupola by 90 percent.

[1] EPA approved rule 930 on May 6, 1980 (45 FR 29790).

MDEQ revised rule 930 to clarify rule requirements and applicability. MDEQ removed the compliance date of December 31, 1982, and replaced it with a general compliance requirement because the compliance date has passed. MDEQ also removed language outlining the details of a compliance plan, instead requiring immediate compliance. MDEQ removed the applicability of rule 930 in Saginaw, Macomb and Oakland Counties where ferrous cupola operations no longer exist. Wayne County is the only remaining area subject to rule 930.

Finally, MDEQ corrected the citation to the Federal test method used to determine CO emission rates for rule compliance. The change to rule 930 clarifies that 40 CFR part 60, appendix A, reference test method 10 must be used to determine CO emission rates for rule compliance, and clarifies that this test method is adopted by reference in rule 902.

II. Did the State hold public hearings for the submittal?

A public hearing on the Part 9 (specifically rule 930) rule revisions was held on May 2, 2016, and no comments were received.

III. What is EPA's analysis of the State's Submittal?

The removal of the compliance plan requirement from rule 930 and the replacement of the December 21, 1982, compliance date with a general compliance requirement is acceptable because the revised language requires immediate compliance.

The removal of Saginaw, Macomb, and Oakland Counties from the list of areas subject to rule 930 is also acceptable because there are no ferrous cupola sources located in these counties. As part of MDEQ's reassessment of rule 930 in 2013, MDEQ conducted a search of the Michigan Air Emissions Reporting System and found that there are no ferrous cupola sources in the Saginaw, Macomb, Oakland, or Wayne Counties. Thus, MDEQ chose to revise the areas subject to rule 930 listed in table 91 by removing Saginaw, Macomb, and Oakland Counties.

Last, the administrative changes to rule 930 that correct the citation to the Federal test method is acceptable because the revised language clarifies that 40 CFR part 60, appendix A, reference test method 10 must be used to determine CO emission rates for rule compliance and its adoption by reference in rule 902. EPA is taking action to approve the revisions to rule 902 in a separate rulemaking.

Section 110(l) Analysis of the State's Submittal

EPA is proposing to approve the revisions to rule 930 discussed above because the revisions meet all applicable requirements under the Clean Air Act (CAA), consistent with section 110(k)(3) of the CAA. Furthermore, MDEQ has shown that the revisions to Part 9 do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement, consistent with section 110(l) of the CAA.

Under Section 110(l) of the CAA, EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA) or any other applicable requirement of the CAA. The proposed SIP revision would not interfere with any applicable CAA requirements based on technical analysis submitted by MDEQ. MDEQ has shown that the impact of revising rule 930 continues to result in attainment of the CO NAAQS. Replacing the obsolete compliance date and compliance plan with a general compliance requirement results in requiring immediate compliance, which is not a relaxation to the SIP. Removing the applicability to areas of the state that no longer contain ferrous cupola sources will have no effect on any emissions and will not interfere with the attainment or maintenance of the CO NAAQS, or any other applicable requirements of the CAA, including the attainment or maintenance of the nitrogen dioxide, lead, particulate matter, or sulfur dioxide NAAQS.

In addition, any new ferrous cupola operations subject to rule 930 that may be sited in Michigan would have to meet the EPA- approved New Source Review permitting requirements (R 336.1201 to R 336.1209), which would ensure that the CO NAAQS would not be exceeded in Saginaw, Macomb, or Oakland Counties, regardless of their exclusion from rule 930.

IV. What action is EPA taking?

EPA is proposing to approve the revision to Michigan's Part 9 Rule submitted by MDEQ on February 2, 2017, and supplemented on November 8, 2017, as a revision to the Michigan SIP. Specifically, we are proposing to approve the revision that updates the applicability of rule 930 to: (1) Remove an obsolete compliance date and requires immediate compliance, (2) remove the areas of the state that no longer contain ferrous cupola sources subject to the rule, and (3) correct the citation to a Federal test method to determine CO emission rates for rule compliance. The revision to this rule will not increase emissions of CO to the atmosphere because no CO emission limits are revised.

Michigan's Part 9 rule also included revisions to rule 902 and rule 916. EPA is taking action to approve the revisions to rule 902 in a separate rulemaking. EPA will also address the revisions to rule 916 separately.

V. Incorporation by Reference.

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to incorporate by reference Michigan Administrative Code R 336.1930 Emission of carbon monoxide from ferrous cupola operations, effective December 20, 2016. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Volatile organic compounds and Ozone.

Dated: April 25, 2018.

Edward H. Chu,

Acting Regional Administrator, Region 5.

[FR Doc. 2018–09414 Filed 5–2–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0358; FRL–9977–29–OAR]

RIN 2060–AT66

National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities; Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Friction Materials Manufacturing Facilities source category. The proposed amendments address the results of the residual risk and technology reviews (RTRs) conducted as required under the Clean Air Act (CAA). The proposed amendments also address the startup, shutdown, and malfunction (SSM) provisions of the rule and update the reporting and recordkeeping requirements.

DATES: *Comments.* Comments must be received on or before June 18, 2018. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before June 4, 2018.

Public Hearing. If a public hearing is requested by May 8, 2018, then we will hold a public hearing on May 18, 2018 at the location described in the **ADDRESSES** section. The last day to pre-register in advance to speak at the public hearing will be May 16, 2018.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0358, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. *Regulations.gov* is our preferred method of receiving comments. However, other submission methods are accepted. To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0358, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. See section I.C of this preamble for instructions on submitting CBI.

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*. The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

Public Hearing. If a public hearing is requested, it will be held at EPA's Headquarters, EPA WJC East Building, 1201 Constitution Avenue NW, Washington, DC 20004. If a public hearing is requested, then we will provide details about the public hearing on our website at: *https://www.epa.gov/stationary-sources-air-pollution/friction-materials-manufacturing-facilities-national-emission*. The EPA does not intend to publish another document in the **Federal Register** announcing any updates on the request for a public hearing. Please contact Aimee St. Clair at (919) 541–1063 or by email at *StClair.Aimee@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

The EPA will make every effort to accommodate all speakers who arrive and register. If a hearing is held at a U.S. government facility, individuals planning to attend should be prepared to show a current, valid state- or federal-approved picture identification to the security staff in order to gain access to the meeting room. An expired form of identification will not be permitted. Please note that the Real ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by a noncompliant state, you must present an additional form of identification to enter a federal facility. Acceptable alternative forms of identification include: Federal employee badge, passports, enhanced driver's licenses, and military identification cards. Additional information on the Real ID Act is available at *https://www.dhs.gov/real-id-frequently-asked-questions*. In

addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Korbin Smith, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2416; fax number: (919) 541–4991; and email address: *smith.korbin@epa.gov*. For specific information regarding the risk modeling methodology, contact James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *hirtz.james@epa.gov*. For information about the applicability of the NESHAP to a particular entity, contact Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (312) 353–6266; and email address: *Ayres.Sara@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0358. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* 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. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0358. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. This type of information should be submitted by mail as discussed in section I.C of this preamble. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets*.

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CFR Code of Federal Regulations
CIIT Chemical Industry Institute of Toxicology
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guideline
FMM friction materials manufacturing
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM-3 Human Exposure Model, Version 1.1.0
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
IRIS Integrated Risk Information System
km kilometer
MACT maximum achievable control technology
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
NAICS North American Industry Classification System
NAS National Academy of Sciences
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
ppm parts per million
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TTN Technology Transfer Network
UF uncertainty factor
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
VCS voluntary consensus standards

Organization of This Document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992), the Friction Materials Manufacturing Facilities source category, which for the remainder of this document will be referred to as Friction Materials Manufacturing or FMM, was initially defined as any facility engaged in the manufacture or remanufacture of friction products, including automobile brake linings and disc pads. Hazardous air pollutants (HAP) are emitted from solvents added during the proportioning and mixing of raw materials and the solvents contained in the adhesives used to bond the linings to the brake shoes. Most HAP emissions occur during heated processes such as curing, bonding and debonding processes. The 1992 initial list of identified HAP from friction products facilities were phenol, toluene, methyl chloroform, and methyl ethyl (which is no longer listed as a HAP (see 70 FR 75059, December 19, 2005)). In 2002, the source category definition was amended (see 67 FR 64497, October 18, 2002) to define a FMM facility as a facility that manufactures friction materials using a solvent-based process. Friction materials are used in the manufacture of products used to accelerate or decelerate objects. Products that use friction materials include, but are not limited to, disc brake pucks, disc brake pads, brake linings, brake shoes, brake segments, brake blocks, brake discs, clutch facings, and clutches.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Industry	Friction Materials Manufacturing.	33634, 327999, 333613.

[1] North American Industry Classification System.

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 action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *http://www.epa.gov/stationary-sources-air-pollution/friction-materials-manufacturing-facilities-national-emission*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall RTR program is available at *http://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*.

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0358).

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2017–0358.

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating these standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to further address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, or control technologies'' that may be appropriate to incorporate into the standards. This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to

implement these statutory requirements. A more comprehensive discussion appears in the document, *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* which is in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). Section 112(f)(2) of the CAA requires the EPA to determine for source categories subject to MACT standards whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step process for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the ''National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants'' (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [1] of approximately [1-in-10 thousand] [*i.e.,* 100-in-1 million].'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to bring risks to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety ''in consideration of all health information, including the number of persons at risk levels higher than approximately [1-in-1 million], as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years. In conducting this so-called ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (DC Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (DC Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA 112(d)(6).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

Only facilities that are major sources of HAP emissions are subject to the FMM NESHAP; area sources of HAP are not subject to the rule. The NESHAP for this source category is codified in 40 CFR part 63, subpart QQQQQ. The HAP emitted by FMM include formaldehyde, methanol, hexane, and phenol. Formaldehyde has the potential to cause chronic cancer and noncancer health effects. The other three HAP are noncarcinogenic and have the potential for chronic and acute noncancer health effects. In 2017, there were two FMM facilities that were subject to the NESHAP.

The affected sources at FMM facilities are the solvent mixing operations as defined in 40 CFR 63.9565. Solvent Mixing Operations are subject to 40 CFR part 63, subpart QQQQQ, emission limits. Current emission limits address large and small solvent mixers. New, reconstructed, and existing large solvent mixers must limit HAP solvent emissions to the atmosphere to no more than 30 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution, based on a 7-day block average (see 40 CFR 63.9500(a)). New, reconstructed, and existing small solvent mixers must limit HAP solvent emissions to the atmosphere to no more than 15 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution, based on a 7-day block average (see 40 CFR 63.9500(b)).

C. What data collection activities were conducted to support this action?

There are two FMM facilities subject to 40 CFR part 63, subpart QQQQQ. The EPA visited both facilities during the development of the NESHAP. We visited Railroad Friction Products Corporation (RFPC) in Maxton, NC, in August 2016, and Knowlton Technologies, LLC, in Watertown, NY,

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

in November 2016. During the visits, we discussed quantity and size of solvent mixers at each site and associated emission points, process controls, monitors, unregulated emissions, and other aspects of facility operations. We attached a questionnaire to the site visit letter and discussed the questionnaire during both site visits. We used the information provided by the facilities to help create the modeling file, as well as profile the sector. The site visit reports are documented in the following memoranda, which are available in the docket for this action: ''Site Visit Report-Railroad Friction Products'' and ''Site Visit Report-Knowlton Technologies, LLC.''

D. What other relevant background information and data are available?

The EPA used information from the Reasonably Available Control Technology (RACT), Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC) database, reviewed title V permits for each FMM facility, and reviewed regulatory actions related to emissions controls at similar sources that could be applicable to FMM. The EPA reviewed the RBLC to identify potential additional control technologies. No additional control technologies applicable to FMM were found using the RBLC; see sections III.C and IV.C of this preamble and the memorandum, ''Technology Review for the Friction Materials Manufacturing Facilities Source Category,'' which is available in the docket for this action, for further details on this source of information.

III. Analytical Procedures

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step process to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information.'' 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[2] The assessment also provides estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The scope of the EPA's risk analysis is consistent with the EPA's response to comment on our policy under the Benzene NESHAP where the EPA explained that:

> [t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of noncancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health'.

See 54 FR 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability, and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify those HAP risks that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risks, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to

[2] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential exposure to the HAP to the level at or below which no adverse chronic noncancer effects are expected; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

which an individual is exposed may be sufficient to result in increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [3]

In response to the SAB recommendations, the EPA is incorporating cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency is (1) conducting facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combining exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzing the ingestion route of exposure. In addition, the RTR risk assessments have always considered aggregate cancer risk from all carcinogens and aggregate noncancer HI from all non-carcinogens affecting the same target organ system.

Although we are interested in placing source category and facility-wide HAP risks in the context of total HAP risks from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Because of the contribution to total HAP risk from emission sources other than those that we have studied in depth during this RTR review, such estimates of total HAP risks would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, in order to inform our decision of whether it is ''necessary'' to revise the emissions standards, we analyze the technical feasibility of applying these developments and the estimated costs, energy implications, and non-air environmental impacts, and we also consider the emission reductions. In addition, we considered the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we reviewed a variety of data sources in our investigation of potential practices, processes, or controls to consider. Among the sources we reviewed were the NESHAP for various industries that were promulgated since the MACT standards being reviewed in this action. We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could be applied to emission sources in the FMM source category, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies. Additionally, we requested information from facilities regarding developments in practices, processes, or control technology. Finally, we reviewed information from other sources, such as state and/or local permitting agency databases and industry-supported databases.

C. How did we estimate post-MACT risks posed by the source category?

The EPA conducted a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this action contains the following document which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Friction Materials Manufacturing Source Category in Support of the February 2018 Risk and Technology Review Proposed Rule*. The methods used to assess risks (as described in the seven primary steps below) are consistent with those peer-reviewed by a panel of the EPA's SAB in 2009 and described in their peer review report issued in 2010; [4] they are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

Solvent mixers are the primary emission source at FMM facilities. Actual emissions for RFPC, which utilizes a solvent recovery system, are estimated using mass balance calculations from the solvent storage tanks. All solvent not recovered is assumed to be emitted.

Potential HAP emissions at Knowlton Technologies, LLC, are captured by a permanent total enclosure and ducted to a boiler for destruction. The potential HAP emissions at Knowlton come from resins/solvents used in the saturator process line, including the resin kitchen. Annual potential emissions of formaldehyde, methanol, and phenol were calculated by using the annual purchasing total of resins/solvents that contain HAP, multiplied by the maximum percent of HAP contained in the resin/solvent to provide a conservative estimate of potential

[3] The EPA's responses to this and all other key recommendations of the SAB's advisory on RTR risk assessment methodologies (which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf*) are outlined in a memorandum to this rulemaking docket from David Guinnup titled *EPA's Actions in Response to the Key Recommendations of the SAB Review of RTR Risk Assessment Methodologies*.

[4] U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* May 2010.

emissions. The potential emissions are controlled by a permanent total enclosure with a capture efficiency of 100 percent, which routes the potential emissions to a boiler. Data from emissions testing conducted in January 2003 were used to determine the boiler destruction efficiencies for a select group of organic compounds, including formaldehyde, methanol, and phenol. Pollutant-specific boiler control efficiencies were used to calculate post control device emissions to the atmosphere. Additional details on the data and methods used to develop actual emissions estimates for the risk modeling are provided in the memorandum, ''Development of the Risk Modeling Dataset,'' which is available in the docket for this action.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions level allowed to be emitted by the MACT standards is referred to as the ''MACT-allowable'' emissions level. We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTRs (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

For FMM, we calculated allowable emissions differently for each facility. For RFPC, we determined that allowable emissions are equal to actual emissions because the facility uses both solvent recovery and solvent substitution to comply with the MACT standard. Solvent substitution credits the facility for 100-percent recovery on every batch that doesn't require the use of a HAP solvent. Batch operations using solvent substitution, thus credited for 100-percent recovery, are then averaged with the batches using solvent recovery, to calculate the facility-wide average recovery percentage. That is to say, if the facility ran 10 batches using solvent substitution, credited as 100-percent recovery, and 10 batches using solvent recovery, which achieved 50-percent recovery of the HAP solvent used, the facility would have an average of 75-percent recovery. These calculations show why using the method of calculating allowable emissions by setting them equal to the minimum requirements to comply with the rule (70- percent recovery) does not accurately quantify this source category. The resulting emissions if each facility calculated each batch to emit at 70-percent would result in actual emissions exceeding allowable emissions due to the credited solvent substitution. As a result, we have decided to set actual emissions equal to allowable emissions to better quantify facility emissions. Allowable emissions for Knowlton Technologies, LLC, were calculated by setting the destruction efficiency at 70-percent to comply with the MACT standard instead of the >99-percent currently estimated by the facility. By setting the destruction efficiency to 70-percent, we can estimate the amount of HAP released if the facility were to meet the minimum requirements for compliance with the MACT standard. Additional details on the data and methods used to develop MACT-allowable emissions for the risk modeling are provided in the memorandum, ''Development of the Risk Modeling Dataset,'' which is available in the docket for this action.

3. How did we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risks?

Both long-term and short-term inhalation exposure concentrations and health risks from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3). The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[5] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[6] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risks. These dose-response values are the latest values recommended by the EPA for HAP. They are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants* and are discussed in more detail later in this section.

b. Risk From Chronic Exposure to HAP That May Cause Cancer

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, for a 70-year period) exposure to the maximum concentration at the centroid of inhabited census blocks. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter) by its unit risk estimate (URE). The URE is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic

[5] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[6] A census block is the smallest geographic area for which census statistics are tabulated.

meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate.

In 2004, the EPA determined that the Chemical Industry Institute of Toxicology (CIIT) cancer dose-response value for formaldehyde (5.5×10^{-9} milligrams per cubic meter (mg/m^3)) was based on better science than the 1991 IRIS dose-response value (1.3×10^{-5} per mg/m^3) and, we switched from using the IRIS value to the CIIT value in risk assessments supporting regulatory actions. Based on subsequent published research, however, the EPA changed its determination regarding the CIIT model, and, in 2010, the EPA returned to using the 1991 IRIS value. The National Academy of Sciences (NAS) completed its review of the EPA's draft assessment in April of 2011 (*http://www.nap.edu/catalog.php?record id=13142*), and the EPA has been working on revising the formaldehyde assessment. The EPA will follow the NAS Report recommendations and will present results obtained by implementing the biologically based dose response (BBDR) model for formaldehyde. The EPA will compare these estimates with those currently presented in the External Review draft of the assessment and will discuss their strengths and weaknesses. As recommended by the NAS committee, appropriate sensitivity and uncertainty analyses will be an integral component of implementing the BBDR model. The draft IRIS assessment will be revised in response to the NAS peer review and public comments and the final assessment will be posted on the IRIS database. In the interim, we will present findings using the 1991 IRIS value as a primary estimate and may also consider other information as the science evolves.

To estimate incremental individual lifetime cancer risks associated with emissions from the facilities in the source category, the EPA summed the risks for each of the carcinogenic HAP [7] emitted by the modeled sources. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources were also estimated for the source category by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

c. Risk From Chronic Exposure to HAP That May Cause Health Effects Other Than Cancer

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*), defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.'' In cases where an RfC from the EPA's IRIS database is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be obtained from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*http://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*http://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3), as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA.

d. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. We use the peak hourly emission rate,[8] worst-case dispersion conditions, and, in accordance with our mandate under section 112 of the CAA, the point of highest off-site exposure to assess the potential risk to the maximally exposed individual.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations), if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [9]

[7] The EPA classifies carcinogens as: Carcinogenic to humans, likely to be carcinogenic to humans, and suggestive evidence of carcinogenic potential. These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[8] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a default factor (usually 10) to account for variability. This is documented in *Residual Risk Assessment for the Friction Materials Manufacturing Facilities Source Category in Support of the March 2018 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Analysis of Data on Short-term Emission Rates Relative to Long-term Emission Rates.* Both are available in the docket for this rulemaking.

[9] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I,*

Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[10] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic non-sensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing, but transient and non-disabling odor, taste, and sensory irritation or certain asymptomatic, non-sensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [11] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For this source category, we used the default multiplication factor of 10. While we don't anticipate large variations in hourly emissions, we took a conservative approach to determine if the default multiplication factor would result in high risk. Upon modeling the emissions using the multiplication factor of 10, we determined that risk was still below 1-in-1 million. Due to the low risk results, further research to justify a lower multiplication factor was not necessary.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP where acute HQs are less than or equal to 1 (even under the conservative assumptions of the screening assessment), and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we consider additional site-specific data to develop a more refined estimate of the potential for acute impacts of concern. For this source category, we did not have to perform any refined acute assessments.

4. How did we conduct the multipathway exposure and risk screening assessment?

The EPA conducted a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determined whether any sources in the source category emitted any HAP known to be persistent and bioaccumulative in the environment (PB–HAP), as identified in the EPA's Air Toxics Risk Assessment Library (available at *http://www2.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the FMM source category, we did not identify emissions of any PB–HAP. Because we did not identify PB–HAP emissions, no further evaluation of multipathway risk was conducted for this source category.

5. How did we conduct the environmental risk screening assessment?

a. Adverse Environmental Effects, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for adverse environmental effects as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, polcyclic organic matter, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, were included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following

The Determination of Acute Reference Exposure Levels for Airborne Toxicants, which is available at *http://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary*.

[10] NAS, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf*. Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs, (*https://www.epa.gov/aegl*).

[11] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf*.

four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Friction Materials Manufacturing Source Category in Support of the Risk and Technology Review February 2018 Proposed Rule,* which is available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any of the FMM facilities emitted any of the environmental HAP. For the FMM source category, we did not identify emissions of any of the seven environmental HAP included in the screen. Because we did not identify environmental HAP emissions, no further evaluation of environmental risk was conducted.

6. How did we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data.

For this source category, we conducted the facility-wide assessment using a dataset that the EPA compiled from the 2014 National Emissions Inventory (NEI). We used the NEI data for the facility and did not adjust any category or ''non-category'' data. Therefore, there could be differences in the dataset from that used for the source category assessments described in this preamble. We analyzed risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, we made a reasonable attempt to identify the source category risks, and these risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Assessment for the Friction Materials Manufacturing Source Category in Support of the Risk and Technology Review February 2018 Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How did we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are protective of health and the environment. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the FMM Source Category in Support of the Risk and Technology Review February 2018 Proposed Rule,* which is available in the docket for this action.

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and

emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risks or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Cancer Guidelines;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (EPA's *2005 Cancer Guidelines,* pages 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit).[12] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[13] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993 and 1994) which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

Although every effort is made to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of humans at the location of the maximum concentration. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and worst-case meteorological conditions co-occur, thus, resulting in maximum ambient concentrations. These two events are unlikely to occur at the same time, making these assumptions conservative. We then include the additional

[12] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[13] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

assumption that a person is located at this point during this same time period. For this source category, these assumptions would tend to be worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and worst-case meteorological conditions occur simultaneously.

IV. Analytical Results and Proposed Decisions

A. What are the results of the risk assessment and analyses?

1. Inhalation Risk Assessment Results

The inhalation risk modeling performed to estimate risks based on actual and allowable emissions relied primarily on emissions data gathered through questionnaires provided during two recent site visits conducted by the EPA. The EPA discussed specific FMM processes with authorized representatives of both facilities, including quantity and size of solvent mixers at each site and associated emission points, process controls, monitors, unregulated emissions, and other aspects of facility operations.

The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual and allowable emissions under 40 CFR part 63, subpart QQQQQ, the MIR posed by the source category is less than 1-in-1 million. The total estimated cancer incidence based on actual emission levels is 0.000005 excess cancer cases per year, or 1 case every 200,000 years. The total estimated cancer incidence based on allowable emission levels is 0.00004 excess cancer cases per year, or 1 case every 25,000 years. Air emissions of formaldehyde contributed 100 percent to this cancer incidence. The population exposed to cancer risks greater than or equal to 1-in-1 million considering actual and allowable emissions is 0 (see Table 2 of this preamble).

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR FRICTION MATERIALS MANUFACTURING SOURCE CATEGORY

[40 CFR part 63, subpart QQQQQ]

	Cancer MIR (in 1 million)		Cancer incidence (cases per year)	Population with risk of 1-in-1 million or more	Population with risk of 10-in-1 million or more	Max chronic noncancer HI (actuals and allowables)
	Based on actual emissions	Based on allowable emissions				
Source Category	< 1 (formaldehyde)	< 1 (formaldehyde)	0.000005	0	0	HI < 1
Whole Facility	5 (hexavalent chromium).		0.0005	2,300	0	HI < 1

The maximum modeled chronic noncancer HI (TOSHI) values for the source category based on actual and allowable emissions are estimated to be 0.01 and 0.02, respectively, with n-hexane emissions from large solvent mixers accounting for 100 percent of the HI.

1. Acute Risk Results

Our screening analysis for worst-case acute impacts based on actual emissions indicates no pollutants exceeding an HQ value of 1 based upon the REL. The acute hourly multiplier utilized a default factor of 10 for all emission processes.

2. Multipathway Risk Screening Results

We did not identify any PB–HAP emissions from this source category. Therefore, we estimate that there is no multipathway risk from HAP emissions from this source category.

3. Environmental Risk Screening Results

We did not identify any PB–HAP or acid gas emissions from this source category. We are unaware of any adverse environmental effect caused by emissions of HAP that are emitted by the FMM source category. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

4. Facility-Wide Risk Results

Considering facility-wide emissions at the two plants, the MIR is estimated to be 5-in-1 million driven by hexavalent chromium emissions, and the chronic noncancer TOSHI value is calculated to be <1 driven by emissions of nickel and hexavalent chromium (see Table 2 of this preamble). The above cancer and noncancer risks are driven by emissions from a miscellaneous industrial process that was not able to be classified.

Approximately 2,300 people are estimated to have cancer risks greater than or equal to 1-in-1 million considering whole facility emissions from the two facilities in the source category (see Table 2 of this preamble).

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the FMM source category across different demographic groups within the populations living near the two facilities.[14]

Results of the demographic analysis indicate that, for 3 of the 11 demographic groups, Native American, ages 0–17, and below the poverty level, the percentage of the population living within 5 km of facilities in the source category is greater than the corresponding national percentage for the same demographic groups. When examining the risk levels of those exposed to emissions from FMM facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

The methodology and the results of the demographic analysis are presented in a technical report, ''Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Friction Materials Manufacturing Facilities,'' available in the docket for this action.

[14] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

1. Risk Acceptability

As noted in section II.A of this preamble, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand.'' (54 FR 38045, September 14, 1989).

In this proposal, the EPA estimated risks based on actual and allowable emissions from the FMM source category. As discussed above, we consider our analysis of risk from allowable emissions to be conservative in the sense of possibly over-estimating HAP emissions and their associated risks.

The inhalation cancer risk to the individual most exposed to emissions from sources in the FMM source category is less than 1-in-1 million, based on actual emissions. The estimated incidence of cancer due to inhalation exposure is 0.000005 excess cancer cases per year, or 1 case in 200,000 years, based on actual emissions. For allowable emissions, we also estimate that the inhalation cancer risk to the individual most exposed to emissions from sources in this source category is less than 1-in-1 million. The estimated incidence of cancer due to inhalation exposure is 0.00004 excess cancer cases per year, or one case in every 25,000 years, based on allowable emissions.

The Agency estimates that the maximum chronic noncancer TOSHI from inhalation exposure is 0.01 due to actual emissions and 0.02 due to allowable emissions. The screening assessment of worst-case acute inhalation impacts from worst-case 1-hour emissions indicates that no HAP exceed an acute HQ of 1.

Since no PB–HAP are emitted by this source category, a multipathway risk assessment was not warranted. We did not identify emissions of any of the seven environmental HAP included in our environmental risk screening assessment, and we are unaware of any adverse environmental effects caused by HAP emitted by this source category. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

In determining whether risk is acceptable, the EPA considered all available health information and risk estimation uncertainty, as described above. The results indicate that both the actual and allowable inhalation cancer risks to the individual most exposed are less than 1-in-1 million, well below the presumptive limit of acceptability of 100-in-1 million. The maximum chronic noncancer TOSHI due to inhalation exposures is less than 1 for actual and allowable emissions. Finally, the evaluation of acute noncancer risks was conservative and showed that acute risks are below a level of concern.

Taking into account this information, the EPA proposes that the risk remaining after implementation of the existing MACT standards for the FMM source category is acceptable.

2. Ample Margin of Safety Analysis

Under the ample margin of safety analysis, we evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied in this source category to further reduce the risks (or potential risks) due to emissions of HAP, considering all of the health risks and other health information considered in the risk acceptability determination described above. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of our MACT rule review to determine whether there are any cost-effective controls or other measures that would reduce emissions further and would be necessary to provide an ample margin of safety to protect public health.

Our risk analysis indicated the risks from the FMM source category are low for both cancer and noncancer health effects, and, therefore, any risk reductions from further available control options would result in minimal health benefits. The options identified include a permanent total enclosure and incinerator (PTEI), which is currently used at Knowlton Technologies, LLC, (Knowlton uses a boiler to function as an incinerator for HAP) and a non-solvent process/reformulation, which is used at RFPC. A combination of the two technologies is not considered to be a realistic control option because a PTEI would not add any additional HAP control if a non-solvent process is used. Therefore, we did not analyze such a combined technology option. We also note that non-solvent process/reformulation is not yet demonstrated for all products, and, therefore, cannot be broadly assumed to be feasible to require. The estimated capital cost to install a PTEI at RFPC using a solvent condenser is $1,612,105, and the estimated annual cost to operate the system is $837,745. We estimate that the PTEI option would achieve a HAP reduction of 228 tons, with a cost effectiveness of $3,700 dollars per ton. The resultant risk reduction would be minimal because the estimated risks are already below levels of concern. A detailed cost breakdown can be found in the memorandum, ''Calculated Cost of PTEI,'' which is located in the docket for this rulemaking.

Cost estimates for installing and operating a non-solvent process/reformulation are based on costs received from RFPC. The mixer and downstream material processing equipment's estimated total capital investment was $2,073,430. Annual cost of operation is approximately $125,000 for electrical cost and $75,000 for maintenance. For more information, see the memorandum, ''Email Correspondence for the Cost of Non-Solvent Mixer RFPC,'' which is available in the docket for this rulemaking. We do not have information that this technology could be applied to other production lines with specific product formulations and performance requirements, and, therefore, we determined that this is not a broadly applicable control that is appropriate for consideration under ample margin of safety. We do note, however, that if the technology could be applied to other productions lines, the resultant risk reduction would be minimal because the estimated risks are already below levels of concern for the industry.

Due to the low level of current risk, the minimal risk reductions that could be achieved with the various control options that we evaluated, and the substantial costs associated with each of the additional control options, as well as the natural progression of industry to move away from HAP containing solvents as acceptable non-HAP formulations are developed, we are proposing that additional emission controls are not necessary to provide an ample margin of safety.

3. Adverse Environmental Effects

We did not identify emissions of any of the seven environmental HAP included in our environmental risk screening, and we are unaware of any adverse environmental effects caused by HAP emitted by this source category. Therefore, we do not expect adverse environmental effects as a result of HAP emissions from this source category and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

C. What are the results and proposed decisions based on our technology review?

In order to fulfill our obligations under CAA section 112(d)(6), we conducted a technology review to identify developments in practices, processes, and control technologies that reduce HAP emissions and to consider whether the current standards should be revised to reflect any such developments. In conducting our technology review, we utilized the RBLC database, reviewed title V permits for each FMM facility, and reviewed regulatory actions related to emissions controls at similar sources that could be applicable to FMM.

After reviewing information from the sources above, we identified the following developments in control technologies for further evaluation: PTEI, and non-solvent process/reformulation, *i.e.,* the same options we considered for possible ample margin of safety options, discussed above. After identifying options for reducing emissions from FMM, we then evaluated the feasibility, costs, and emissions reductions associated with each of the technologies. Additional information about this determination is documented in the memorandum, ''Technology Review for the Friction Materials Manufacturing Source Category,'' which is available in the docket for this action.

We evaluated the cost of installing a PTEI at RFPC (currently operating a solvent recovery system). The total capital investment for installing a PTEI is described in the Ample Margin of Safety Analysis (section IV.B.2) above. Overall, the estimated cost effectiveness of installing and operating a PTEI is approximately $3,700 per ton of hexane reduced. Furthermore, use of an incinerator would result in increased energy usage and nitrogen oxide emissions. Considering the associated cost per ton of hexane reduction and increased nitrogen oxide emissions associated with the operation of an incinerator, we did not find potentially requiring this technology to be cost effective or necessary under CAA section 112(d)(6).

RFPC is also in the process of removing HAP solvent from its production process. It is accomplishing this through the utilization of a non-solvent process/reformulation. This process change would eventually eliminate the need for HAP solvents and their associated emissions. The ability to use a non-solvent process/reformulation depends primarily on each facility's ability to successfully reformulate products while still meeting the required specifications. Therefore, a change that may be used successfully to reduce HAP emissions at one facility may not work for another facility or for all products at the same facility. We do not consider this process change to be a feasible regulatory alternative or necessary under CAA section 112(d)(6).

Based on the results of the technology review, we conclude, and propose to find, that changes to the FMM emissions limits pursuant to CAA section 112(d)(6) are not necessary. We solicit comment on our proposed decision.

D. What other actions are we proposing?

In addition to the proposed determinations described above, we are proposing some revisions to the rule. We are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court's decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM.

1. Startup, Shutdown, and Malfunction Requirements

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 1 to 40 CFR part 63, subpart QQQQQ (the General Provisions Applicability Table), as explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing to make the current standards in the rule applicable during SSM periods, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods. The two FMM facilities subject to this rulemaking run their associated control technologies during all periods of operation, including startup and shutdown, allowing them to comply with the emissions standards at all times. The EPA has no reason to believe that emissions are significantly different during periods of startup and shutdown from those during normal operations.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, processes, or monitoring equipment. (40 CFR 63.2) (definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operation of a source. A malfunction is a failure of

the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *U.S. Sugar Corp,* accounting for malfunctions in setting numerical or work practice standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in a category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 (''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.''). As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' ''). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector Risk and Technology Review, the EPA established a work practice standard for unique types of malfunction that result in releases from pressure relief devices or emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the best performing sources. 80 FR 75178, 75211–14 (December 1, 2015). The EPA will consider whether circumstances warrant setting work practice standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information.

In the event that a source fails to comply with the applicable CAA section 112 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112 standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

2. 40 CFR 63.9505 General Compliance Requirements

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.9505 that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing at 40 CFR 63.9505(a) and (c) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.9505.

3. SSM Plan

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore,

affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance, and, thus, the SSM plan requirements are no longer necessary.

4. Compliance With Standards

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

5. Monitoring

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' The cross-references to the general duty and SSM plan requirements in those paragraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)).

6. 40 CFR 63.9545 What records must I keep?

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.9545. The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.9545 a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.9545(a)(2).

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

7. 40 CFR 63.9540 What reports must I submit and when?

We are proposing to revise the General Provisions table (Table 1 to 40 CFR part 63, subpart QQQQQ) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.9540(b)(4). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. We are proposing that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source(s) or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because such plans will no longer be required. The proposed amendments, therefore, eliminate the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to revise the General Provisions table (Table 1 to 40

CFR part 63, subpart QQQQQ) entry for 40 CFR 63.10(d)(5)(ii) by changing the ''yes'' in column ''Applies to subpart QQQQQ?'' to a ''no.'' Section 63.10(d)(5)(ii) describes an immediate report for startup, shutdown, and malfunctions when a source fails to meet an applicable standard, but does not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because such plans will no longer be required.

E. What compliance dates are we proposing?

The EPA is proposing that existing affected sources and affected sources that commenced construction or reconstruction on or before May 3, 2018 must comply with all of the amendments no later than 180 days after the effective date of the final rule. (The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10)). For existing sources, we are proposing a change that would impact ongoing compliance requirements for 40 CFR part 63, subpart QQQQQ. As discussed elsewhere in this preamble, we are proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operations to reflect the revised requirements. From our assessment of the timeframe needed for compliance with the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable, and, thus, is proposing that existing affected sources be in compliance with this regulation's revised requirements within 180 days of the regulation's effective date. We solicit comment on this proposed compliance period, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with them. We note that information provided may result in changes to the proposed compliance date. Affected sources that commence construction or reconstruction after May 3, 2018 must comply with all requirements of the subpart, including the amendments being proposed, no later than the effective date of the final rule or upon startup, whichever is later. All affected facilities would have to continue to meet the current requirements of subpart QQQQQ until the applicable compliance date of the amended rule.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

We anticipate that two FMM facilities currently operating in the United States will be affected by these proposed amendments. The basis of our estimate of affected facilities are provided in the memorandum, ''Identification of Major Sources for the NESHAP for Friction Materials Manufacturing,'' which is available in the docket for this action. We are not currently aware of any planned or potential new or reconstructed FMM facilities.

B. What are the air quality impacts?

We do not anticipate that the proposed amendments to this subpart will impact air quality.

C. What are the cost impacts?

The two existing FMM facilities that would be subject to the proposed amendments would incur a net cost savings due to revised recordkeeping and reporting requirements. Nationwide annual net cost savings associated with the proposed requirements are estimated to be $7,358 in 2016 dollars. For further information on the costs and cost savings associated with the requirements being proposed, see the memorandum, ''FMM Economic Impacts Memo,'' and the document, ''Friction Materials Manufacturing 2018 Supporting Statement,'' which are both available in the docket for this action. We solicit comment on these estimated cost impacts.

D. What are the economic impacts?

As noted earlier, the nationwide annual net cost savings associated with the revised recordkeeping and reporting requirements are estimated to be $7,358 per year. The equivalent annualized value (in 2016 dollars) of these net cost savings over 2019 through 2027 is $6,461 per year when costs are discounted at a 7-percent rate, and $7,381 per year when costs are discounted at a 3-percent rate. This cost savings is not expected to result in changes to business operations, or result in a significant price change of products.

E. What are the benefits?

As discussed above, we do not anticipate the proposed amendments to this subpart to impact air quality.

VI. Request for Comments

We solicit comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any information that improves the quality and quantity of data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *http://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*. The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any available ''improved'' data. When you submit data, we request that you provide documentation of the basis for any revised values. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.

2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2017–0358 (through the

method described in the **ADDRESSES** section of this preamble).

5. Whether you are providing comments on a single facility or multiple facilities, you need only submit one file. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR website at *http://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

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

This action is not a significant regulatory action and was therefore not submitted to OMB for review.

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

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2025.08. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

We are proposing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart QQQQQ, in the form of eliminating the SSM plan and reporting requirements, and increasing reporting requirements for the semiannual report of deviation. We also recalculated the estimated recordkeeping burden for records of SSM to more accurately represent the removal of the SSM exemption, which is discussed in more detail in the memorandum, ''Email Correspondence estimating the cost of SSM reporting with Knowlton Technologies, LLC.''

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of facilities that produce friction products subject to 40 CFR part 63, subpart QQQQQ.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart QQQQQ).

Estimated number of respondents: Two facilities.

Frequency of response: Initially and semiannually.

Total estimated burden: The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 535 hours (per year). Of these, 115 hours (per year) is the reduced burden to comply with the proposed rule amendments. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be $35,200 (rounded, per year), including $544 annualized capital or operation and maintenance costs. This results in a decrease of $7,400 (rounded, per year) to comply with the proposed amendments to the rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than June 4, 2018. The EPA will respond to any ICR-related comments in the final rule.

D. 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. There are no small entities in this regulated industry.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the friction material manufacturing industry that would be affected by this action. Thus, Executive Order 13175 does not apply to this action.

H. 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 the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and IV.A and B of this preamble.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, the Agency identified no such standards. Therefore, the EPA has decided to continue the use of the weighing procedures based on EPA Method 28 of 40 CFR part 60, appendix A (section 10.1) for weighing of recovered solvent. A thorough summary of the search conducted and results are included in the memorandum titled ''Voluntary Consensus Standard Results for Friction

Materials Manufacturing Facilities Residual Risk and Technology Review,'' which is available in the docket for this action.

K. 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).

The documentation for this decision is contained in section IV.A of this preamble and the technical report, ''Friction Materials Manufacturing Demographic Analysis,'' which is available in the docket for this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 23, 2018.

E. Scott Pruitt,

Administrator.

For the reasons stated in the preamble, the EPA proposes to amend title 40, chapter I, part 63 of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart QQQQQ—National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

■ 2. Section 63.9495 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 63.9495 When do I have to comply with this subpart?

(a) If you have an existing solvent mixer, you must comply with each of the requirements for existing sources no later than October 18, 2005, except as otherwise specified at this section and §§ 63.9505, 63.9530, 63.9540, 63.9545, and Table 1 to this subpart.

(b) If you have a new or reconstructed solvent mixer for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018 you must comply with the requirements for new and reconstructed sources upon initial startup, except as otherwise specified at this section and §§ 63.9505, 63.9530, 63.9540, 63.9545, and Table 1 to this subpart.

* * * * *

(e) Solvent mixers constructed or reconstructed after May 3, 2018 must be in compliance with this subpart at startup or by [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], whichever is later.

■ 3. Revise § 63.9505 to read as follows:

§ 63.9505 What are my general requirements for complying with this subpart?

(a) Before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], for each existing source and each new or reconstructed source for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018 you must be in compliance with the emission limitations in this subpart at all times, except during periods of startup, shutdown, or malfunction. After [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], for each such source you must be in compliance with the emission limitations in this subpart at all times. For new and reconstructed sources for which construction or reconstruction commenced after May 3, 2018, you must be in compliance with the emissions limitations in this subpart at all times.

(b) Before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). After [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for each such source, and after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for new and reconstructed sources for which construction or reconstruction commended after May 3, 2018, at all times you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(c) Before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], for each existing source, and for each new or reconstructed source for which construction commenced after October 18, 2002, but before May 14, 2018, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). For each such source, a startup, shutdown, and malfunction plan is not required after [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]. No startup, shutdown, and malfunction plan is required for any new or reconstructed source for which construction or reconstruction commenced after May 3, 2018.

■ 4. Section 63.9530 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

(a) * * *

(1) For existing sources and for new or reconstructed sources for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018, before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], except for during malfunctions of your weight measurement device and associated repairs, you must collect and record the information required in § 63.9520(a)(1) through (8) at all times that the affected source is operating and record all information needed to document conformance with these requirements. After [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for such sources, and after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for new or reconstructed sources that commenced construction after May 3, 2018, you must collect and record the information required in § 63.9520(a)(1) through (8) at all times that the affected source is operating and record all information

needed to document conformance with these requirements.

* * * * *

(e) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after October 18, 2002, but before May 4, 2018, before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). After [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for such sources, and after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for new or reconstructed sources which commence construction or reconstruction after May 3, 2018, all deviations are considered violations.

■ 5. Section 63.9540 is amended by revising paragraphs (b)(4), (c)(2), and (d) to read as follows:

§ 63.9540 What reports must I submit and when?

* * * * *

(b) * * *

(4) For existing sources and for new or reconstructed sources for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018, before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], if you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). A startup, shutdown, and malfunction plan is not required for such sources after [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

* * * * *

(c) * * *

(2) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after October 18, 2002, but before May 4, 2018, before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken. After [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for such sources, and after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018, information on the number of deviations to meet an emission limitation. For each instance, include the date, time, duration, and cause of deviations (including unknown cause, if applicable), as applicable, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions, and the corrective action taken.

(d) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after October 18, 2002, but before May 4, 2018, before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], if you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii). An immediate startup, shutdown, and malfunction report is not required for such sources after [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

* * * * *

■ 6. Section 63.9545 is amended by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 63.9545 What records must I keep?

(a) * * *

(2) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after October 18, 2002, but before May 4, 2018, before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, or malfunction. For such sources, it is not required to keep records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, or malfunction after [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(3) After [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018, and after [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] for all other affected sources, in the event that an affected unit fails to meet an applicable standard, record the number of deviations. For each deviation, record the date, time and duration of each deviation.

(i) For each deviation, record and retain cause of deviations (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(ii) Record actions taken to minimize emissions in accordance with § 63.9505, and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

■ 7. Table 1 to subpart QQQQQ of part 63 is amended by:

■ a. Removing the entry ''§ 63.6(a)–(c), (e)–(f), (i)–(j)'';

■ b. Adding the entries ''§ 63.6(a)–(c), (i)–(j)'', ''§ 63.6(e)(1)(i)–(ii)'', ''§ 63.6(e)(1)(iii), (e)(2)'', ''§ 63.6(e)(3)'', ''§ 63.6(f)(1)'', and ''§ 63.6(f)(2)–(3)'' in numerical order;

■ c. Removing the entry ''§ 63.8(a)(1)–(2), (b), (c)(1)–(3), (f)(1)–(5)'';

■ d. Adding the entries ''§ 63.8(a)(1)–(2)'', ''§ 63.8(b)'', ''§ 63.8(c)(1)(i), (iii)'', ''§ 63.8(c)(1)(ii), (c)(2), (c)(3)'', and ''§ 63.8(f)(1)–(5)'' in numerical order;

■ e. Removing the entry ''§ 63.10(a), (b), (d)(1), (d)(4)–(5), (e)(3), (f)''; and

■ f. Adding the entries ''§ 63.10(a), (b)(1), (d)(1), (d)(4), (e)(3), (f)'', ''§ 63.10(b)(2)(i), (ii), (iv), (v)'', ''§ 63.10(b)(2)(iii), (vi)–(xiv)'', and ''§ 63.10(d)(5)'' in numerical order.

The revisions and additions read as follows:

TABLE 1 TO SUBPART QQQQQ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ

* * * * * * *

Citation	Subject	Applies to subpart QQQQQ?	Explanation
*	* *	* * *	*
§ 63.6(a)–(c), (i)–(j)	Compliance with Standards and Maintenance Requirements.	Yes	
*	* *	* * *	*
§ 63.6(e)(1)(i)–(ii)	SSM Operation and Maintenance Requirements.	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], and No thereafter	Subpart QQQQQ requires affected units to meet emissions standards at all times. See § 63.9505 for general duty requirement.
§ 63.6(e)(1)(iii), (e)(2)	Operation and Maintenance.	Yes	
§ 63.6(e)(3)	SSM Plan Requirements	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], and No thereafter	Subpart QQQQQ requires affected units to meet emissions standards at all times.
§ 63.6(f)(1)	SSM Exemption	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], and No thereafter	Subpart QQQQQ requires affected units to meet emissions standards at all times.
§ 63.6(f)(2)–(3)	Compliance with Non-opacity Emission Standards.	Yes	
*	* *	* * *	*
§ 63.8(a)(1)–(2)	Applicability and Relevant Standards for CMS.	Yes	
*	* *	* * *	*
§ 63.8(b)	Conduct of Monitoring	Yes	
§ 63.8(c)(1)(i)–(iii)	Continuous Monitoring System (CMS) SSM Requirements.	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], and No thereafter	
§ 63.8(c)(1)(ii), (c)(2), (c)(3)	CMS Repairs, Operating Paramaters, and Performance Tests.	Yes	
*	* *	* * *	*
§ 63.8(f)(1)–(5)	Alternative Monitoring Procedure.	Yes	
*	* *	* * *	*
§ 63.10(a), (b)(1), (d)(1), (d)(4), (e)(3), (f).	Recordkeeping and Reporting Requirements.	Yes	
*	* *	* * *	*
§ 63.10(b)(2)(i), (ii), (iv), (v)	Recordkeeping for Startup, Shutdown and Malfunction.	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], and No thereafter	See § 63.9545 for recordkeeping requirements.
§ 63.10(b)(2)(iii), (vi)–(xiv)	Owner/Operator Recordkeeping Requirements.	Yes	

TABLE 1 TO SUBPART QQQQQ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ—Continued

Citation	Subject	Applies to subpart QQQQQ?	Explanation
*	*	*	*
§ 63.10(d)(5)	SSM reports	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before [DATE 181 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], and No thereafter	See § 63.9540 for malfunction reporting requirements.
*	*	*	*

[FR Doc. 2018–09200 Filed 5–2–18; 8:45 am]

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Notices

Federal Register
Vol. 83, No. 86
Thursday, May 3, 2018

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

Rural Housing Service

Notice of Solicitation of Applications for the Community Facilities Technical Assistance and Training Grant for Fiscal Year 2018

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces that the Rural Housing Service (Agency) is accepting Fiscal Year (FY) 2018 applications for the Community Facilities Technical Assistance and Training (TAT) Grant program. The Agency is publishing the amount of funding received in the appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas*. Grant funds not obligated by September 15 of this fiscal year can be used to fund Essential Community Facilities grant or loan guarantee programs.

DATES: To apply for funds, the Agency must receive the application by 5:00 Eastern Daylight Time on July 2, 2018. Electronic applications must be submitted via grants.gov by Midnight Eastern time on July 2, 2018. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to June 22, 2018. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

ADDRESSES: Applications will be submitted to the USDA Rural Development State Office in the state where the applicant's headquarters is located. A listing of each State Office can be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf*. If you want to submit an electronic application, follow the instructions for the TAT funding announcement on *http://www.grants.gov*. For those applicants located in the District of Columbia, applications will be submitted to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Room 0175–S, Washington, DC 20250. Electronic applications will be submitted via *http://www.grants.gov*. All applicants can access application materials at *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: The Rural Development office in which the applicant is located. A list of the Rural Development State Office contacts can be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf*. Applicants located in Washington DC can contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: The Rural Housing Service (RHS), an agency within the USDA Rural Development mission area herein referred to as the Agency, published a final rule with comment in the **Federal Register** on January 14, 2016, implementing Section 6006 of the Agriculture Act of 2014 (Pub. L. 113–79) which provides authority to make Community Facilities Technical Assistance and Training (TAT) Grants. The final rule became effective on March 14, 2016, and is found at 7 CFR 3570, subpart F. A correction amendment was published in the **Federal Register** on May 6, 2016. The purpose of this Notice is to solicit applications for the FY 2018 TAT Grant Program.

The Agency encourages applications that will support recommendations made in the Rural Prosperity Task Force report to help improve life in rural America (*www.usda.gov/ruralprosperity*). Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships, and innovation. Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0575–0198.

National Environmental Policy Act

All recipients under this Notice are subject to the requirements of 7 CFR part 1970. However, awards for technical assistance and training under this Notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional documentation. The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Community Facilities Technical Assistance and Training Grant.

Announcement Type: Notice of Solicitation of Applications (NOSA).

Catalog of Federal Domestic Assistance Number: 10.766.

Dates: To apply for funds, the Agency must receive the application by 5:00 p.m. Eastern Daylight Time on July 2, 2018. Electronic applications must be submitted via grants.gov by Midnight Eastern time on July 2, 2018. The Agency will not consider any application received after this deadline. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to June 22, 2018. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth

analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Availability of Notice: This Notice is available through the USDA Rural Development site at: *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas*.

I. Funding Opportunity Description

A. Purpose

Congress authorized the Community Facilities Technical Assistance and Training Grant program in Title VI, Section 6006 of the Agricultural Act of 2014 (Pub. L. 113–79). Program regulations can be found at 7 CFR part 3570, subpart F, which are incorporated by reference in this Notice. The purpose of this Notice is to seek applications from entities that will provide technical assistance and/or training with respect to essential community facilities programs. It is the intent of this program to assist entities in rural areas in accessing funding under the Rural Housing Service's Community Facilities Programs in accordance with 7 CFR part 3570, subpart F. Funding priority will be made to private, nonprofit or public organizations that have experience in providing technical assistance and training to rural entities.

II. Award Information

Type of Awards: Grants will be made to eligible entities who will then provide technical assistance and/or training to eligible ultimate recipients.

Fiscal Year Funds: FY 2018 Technical Assistance Training (TAT) Grant funds.

Available Funds: The Agency is publishing the amount of funding received in the appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas*. Up to ten percent of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 75.

Award Amounts: Grants will be made in amounts based upon the availability of grant funds, but no grant award will exceed $150,000. Grant awards made to Ultimate Recipients will not exceed $50,000. The Agency reserves the right to reduce funding amounts based on the Agency's determination of available funding or other Agency funding priorities.

Award Dates: Awards will be made from available funding on or before September 15, 2018.

III. Eligibility Information

Both the applicant and the use of funds must meet eligibility requirements. The applicant eligibility requirements can be found at 7 CFR 3570.262. Eligible project purposes can be found at 7 CFR 3570.263. Ineligible project purposes can be found at 7 CFR 3570.264. Restrictions substantially similar to Sections 743, 744, 745, and 746 outlined in Title VII, ''General Provisions—Government-Wide'' of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) will apply unless noted on the Rural Development website (*https://www.rd.usda.gov/programs-services/community-facilities-technical-assistance-and-training-grant*). Any corporation (i) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (ii) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. In addition, none of the funds appropriated or otherwise made available by this or any other Act may be available for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. Additionally, no funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: ''These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection.''

IV. Application and Submission Information

The requirements for submitting an application can be found at 7 CFR 3570.267. All Applicants can access application materials at *http://www.grants.gov*. Applications must be received by the Agency by the due date listed in the **DATES** section of this Notice. Applications received after that due date will not be considered for funding. Paper copies of the applications will be submitted to the State Office in which the applicant is headquartered. Electronic submissions should be submitted at *http://www.grants.gov*. A listing of the Rural Development State Offices may be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf*. For applicants whose headquarters are in the District of Columbia, they will submit their application to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Room 0175–S, Washington, DC 20250. Both paper and electronic applications must be received by the Agency by the deadlines stated in the **DATES** section of this Notice. The use of a courier and package tracking for paper applications is strongly encouraged.

Application information for electronic submissions may be found at *http://www.grants.gov*.

Applications will not be accepted via FAX or electronic email.

V. Application Processing

Applications will be processed and scored in accordance with this NOSA and 7 CFR 3570.273. Those applications receiving the highest points using the scoring factors found at 7 CFR 3570.273 will be selected for funding. Up to 10% of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 75. In the case of a tie, the first tie breaker will go to the applicant who scores the highest on matching funds. If two or more applications are still tied after using this tie breaker, the next tie breaker will go to the applicant who scores the highest in the multi-jurisdictional category.

Once the successful applicants are announced, the State Office will be responsible for obligating the grant funds, executing all obligation documents, and the grant agreement, as provided by the agency.

VI. Federal Award Administration Information

1. Federal Award Notice. Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice and the grant regulation 7 CFR 3570, subpart F.

Successful applicants will receive a letter in the mail containing instructions on requirements necessary to proceed with execution and performance of the award. This letter is not an authorization to begin performance. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award date, if requested by the Agency.

The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds'' and the grant agreement.

Unsuccessful and ineligible applicants will receive written notification of their review and appeal rights.

2. Administrative and National Policy Requirements. Grantees will be required to do the following:

(a) Execute a Grant Agreement.

(b) Execute Form RD 1940–1.

(c) Use Form SF 270, ''Request for Advance or Reimbursement'' to request reimbursement. Provide receipts for expenditures, timesheets, and any other documentation to support the request for reimbursement.

(d) Provide financial status and project performance reports as set forth at 7 CFR 3570.276.

(e) Maintain a financial management system that is acceptable to the Agency.

(f) Ensure that records are maintained to document all activities and expenditures utilizing CF TAT grant funds and any matching funds, if applicable. Receipts for expenditures will be included in this documentation.

(g) Provide audits or financial information as set forth in 7 CFR 3570.277.

(h) Complete Form 400–4, ''Assurance Agreement.'' Each prospective recipient must sign Form RD 400–4, Assurance Agreement, which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15 and other Agency regulations. It also assures that no person will be discriminated against based on race, color or national origin, in regard to any program or activity for which the re-lender receives Federal financial assistance. Finally, it assures that nondiscrimination statements are in the recipient's advertisements and brochures.

(i) Collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(j) Provide a final performance report as set forth at 7 CFR 3570.276(a)(7).

(k) Identify and report any association or relationship with Rural Development employees.

(l) The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E. The grantee must comply with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations and any successor regulations:

(1) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(2) 2 CFR parts 417 and 180 (Government-wide Debarment and Suspension (Nonprocurement)).

(m) Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants'' must be signed by corporate applicants who receive an award under this Notice.

3. Reporting

Reporting requirements for this grant as set forth at 7 CFR 3570.276.

VII. Federal Awarding Agency Contact

Contact the Rural Development state office in the state where the applicant's headquarters is located. A list of Rural Development State Offices can be found at: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf*. For Applicants located in Washington DC, please contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@wdc.usda.gov*.

VIII. Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *By mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov*.

Dated: April 18, 2018.

Curtis M Anderson,

Acting Administrator, Rural Housing Service.

[FR Doc. 2018–09351 Filed 5–2–18; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration, Commerce.

Title: Surveys for User Satisfaction, Impact, and Needs.

OMB Control Number: 0625–0275.

Form Number(s): ITA–XXXX.

Type of Request: Regular submission; new information collection; generic clearance.

Number of Respondents: 50,000.

Average Hours per Response: 0.5 (30 minutes).

Burden Hours: 25,000 (annual).

Needs and Uses: The International Trade Administration provides a multitude of international trade related programs to help U.S. businesses. These programs include information products, services, and trade events. To accomplish its mission effectively, ITA needs ongoing feedback on its programs. This information collection item allows ITA to solicit clients' opinions about the use of ITA products, services, and trade events. To promote optimal use and provide focused and effective improvements to ITA programs, we are requesting approval for this clearance package; including: Use of Comment Cards (*i.e.* transactional-based surveys) to collect feedback immediately after ITA assistance is provided to clients; use of annual surveys (*i.e.* relationship-based surveys) to gauge overall satisfaction, impact and needs for clients with ITA assistance provided over a period time; use of multiple data collection methods (*i.e.* web-enabled surveys sent via email, telephone interviews, automated telephone surveys, and in-person surveys via mobile devices/laptops/tablets at trade events/shows) to enable clients to conveniently respond to requests for feedback; and a forecast of burden hours. Without this information, ITA is unable to systematically determine the actual and relative levels of performance for its programs and products/services and to provide clear, actionable insights for managerial intervention. This information will be used for program evaluation and improvement, strategic planning, allocation of resources and stakeholder reporting.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; and Federal government.

Frequency: Once a year.

Respondent's Obligation: None.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–09380 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–64–2018]

Foreign-Trade Zone 24—Pittston, Pennsylvania; Application for Subzone Expansion; Brake Parts Inc; Hazleton, Pennsylvania

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting an expansion of Subzone 24E on behalf of Brake Parts Inc in Hazleton, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on April 30, 2018.

Subzone 24E was approved on March 2, 2017 (Doc. S–169–2016). The subzone currently consists of the following site: Site 1 (28 acres)—62 Green Mountain Road, Hazleton, Schuylkill County.

The current request would add 15.2 acres to the existing subzone site. No additional authorization for production activity has been requested at this time. The subzone would continue to be subject to the existing activation limit of FTZ 24.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 12, 2018. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 27, 2018.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz*.

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: April 30, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–09387 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection Renewal; Comment Request; Domestic and International Client Export Services and Customized Forms

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 2, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomment@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joe Carter, Office of Strategic Planning, 1999 Broadway, Suite 2205 Denver, CO 80220, (303) 844–5656, *joe.carter@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's (ITA) Global Markets/U.S. Commercial Service (CS) is mandated by Congress to broaden and deepen the U.S. exporter base. The CS accomplishes this by providing counseling, programs and services to help U.S. organizations export and conduct business in overseas markets.

This information collection package enables the CS to provide appropriate export services to U.S. exporters and international buyers.

CS offers a variety of services to enable clients to begin exporting/importing or to expand existing exporting/importing efforts. Clients may learn about our services from business related entities such as the National Association of Manufacturers, Federal Express, State Economic Development offices, the internet or word of mouth. The CS provides a standard set of services to assist clients with identifying potential overseas partners, establishing meeting programs with appropriate overseas business contacts and providing due diligence reports on potential overseas business partners. The CS also provides other export-related services considered to be of a ''customized nature'' because they do not fit into the standard set of CS export services, but are driven by unique business needs of individual clients.

The dissemination of international market information and potential business opportunities for U.S. exporters are critical components of the Commercial Service's export assistance programs and services. U.S. companies conveniently access and indicate their interest in these services by completing the appropriate forms via ITA and CS U.S. Export Assistance Center websites.

The CS works closely with clients to educate them about the exporting/importing process and to help prepare them for exporting/importing. When a client is ready to begin the exporting/importing process our field staff provide counseling to assist in the development of an exporting strategy. We provide fee-based, export-related services designed to help client export/import. The type of export-related service that is proposed to a client depends upon a client's business goals and where they are in the export/import process. Some clients are at the beginning of the export process and require assistance with identifying potential distributors, whereas other clients may be ready to sign a contract with a potential distributor and require due diligence assistance.

Before the CS can provide export-related services to clients, such as assistance with identifying potential partners or providing due diligence, specific information is required to determine the client's business objectives and needs. For example, before we can provide a service to identify potential business partners we need to know whether the client would like a potential partner to have specific technical qualifications, coverage in a specific market, English or foreign language ability or warehousing requirements. This information collection is designed to elicit such data so that appropriate services can be proposed and conducted to most effectively meet the client's exporting goals. Without these forms the CS is unable to provide services when requested by clients.

The forms ask U.S. exporters standard questions about their company details, export experience, information about the products or services they wish to export and exporting goals. A few questions are tailored to a specific program type and will vary slightly with each program. CS staff use this information to gain an understanding of client's needs and objectives so that they can provide appropriate and effective export assistance tailored to an exporter's requirements.

II. Method of Collection

CS is seeking approval for the following data collection methods to provide flexibility for how clients will provide information about their company details, export experience, information about the products or services they wish to export and exporting goals. Clients will be asked to provide their information on our website (export.gov), web-based survey or form links, or paper-based forms.

III. Data

OMB Control Number: 0625–0143.

Form Number(s): ITA–4096P.

Type of Review: Renewal submission.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; and Federal government.

Estimated Number of Respondents: 200,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 33,333 hours.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–09381 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Western and Central Pacific Fisheries Convention Vessel Information Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 2, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Rini Ghosh, 808–725–5033 or *rini.ghosh@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

National Marine Fisheries Service (NMFS) has issued regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 U.S.C. 6901 *et seq.*) to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central

Pacific Ocean (Convention), including implementing the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The regulations include requirements for the owners or operators of U.S. vessels to: (1) Apply for and obtain a WCPFC Area Endorsement if the vessel is used for fishing for highly migratory species on the high seas in the Convention Area (50 CFR 300.212), (2) complete and submit a Foreign Exclusive Economic Zone (EEZ) Form if the vessel is used for fishing for highly migratory species in the Convention Area in areas under the jurisdiction of any nation other than the United States (50 CFR 300.213), and (3) request and obtain an IMO number if the vessel is used for fishing for highly migratory species on the high seas or in areas under the jurisdiction of any nation other than the United States (50 CFR 300.217(c)). An IMO number is the unique number issued for a vessel under the ship identification number scheme established by the International Maritime Organization or, for vessels that are not strictly subject to that scheme, the unique number issued by the administrator of that scheme using the scheme's numbering format, sometimes known as a Lloyd's Register number or LR number.

The application for WCPFC Area Endorsements calls for specified information about the vessel and its operator that is not already collected via the application for high seas fishing permits issued under 50 CFR 300.333. The Foreign EEZ Form calls for specified information about the vessel, its owners and operators and any fishing authorizations issued by other nations. The information required to obtain an IMO number is not submitted to NMFS directly, but to a third party and serves to ensure that IMO numbers are issued for certain categories of vessels.

This information collected under the three requirements is used by NOAA, the U.S. Coast Guard, and the Commission to monitor the size and composition of the HMS fleets in the Convention Area for compliance-related and scientific purposes and to ensure that IMO numbers are issued for certain categories of vessels.

II. Method of Collection

Respondents must submit some of the information by mail or in person via paper forms, and have a choice of submitting some of the information electronically, by mail, or in person.

III. Data

OMB Control Number: 0648–0595.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 55.

Estimated Time per Response: WCPFC Area Endorsement Application, 60 minutes; Foreign EEZ Form, 90 minutes; IMO number application, 30 minutes.

Estimated Total Annual Burden Hours: 58.

Estimated Total Annual Cost to Public: $2,465 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–09374 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG200

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 public meeting of its Scallop Committee 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 Thursday, May 24, 2018 at 9 a.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903; Phone: (401) 861–8000.

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 Scallop Committee will provide research recommendations for the 2018/19 Scallop Research Set-Aside (RSA) federal funding announcement. They also plan to review progress on 2018 work priorities, focusing on (1) standard default measures; (2) monitoring and catch accounting. Progress on other work items may be discussed, as well as the initiation of appropriate vehicles (Specifications package, Framework, Amendment) to complete work items. The committee will also receive an update on Scallop Committee tasking re: Achieved at-sea monitoring coverage levels. Other business may be discussed as necessary.

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 these meetings. 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. 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: April 30, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–09393 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG203

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Acting Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit Application from the Atlantic Offshore Lobsterman's Association and Maine Department of Marine Resources contains all the required information and warrants further consideration. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notice to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before May 18, 2018.

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

- *Email: NMFS.GAR.EFP@noaa.gov*. Include in the subject line ''Comments on AOLA Lobster EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on AOLA Lobster EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, NOAA Affiliate, (978) 281–9225.

SUPPLEMENTARY INFORMATION: The Atlantic Offshore Lobstermen's Association (AOLA) and Maine Department of Marine Resources (ME DMR) submitted a complete application for an Exempted Fishing Permit (EFP) on April 10, 2018, to conduct fishing activities that the regulations would otherwise restrict. The EFP would authorize one commercial fishing vessel to conduct a lobster tagging study using experimental traps to track movements and migrations of American lobster in the Gulf of Maine/Georges Bank stock. This EFP proposes to use 300 experimental traps in Lobster Conservation Management Area (LCMA) 3 in statistical area 515. Maps depicting this area is available on request.

AOLA and ME DMR are requesting exemptions from the following Federal lobster regulations:

1. Gear specification requirements to allow for the use of traps with escape vents compliant with LCMA 1, but not LCMA 3 (50 CFR 697.21(c)(4));

2. Trap limit requirements to allow for trap limits to be exceeded (§ 697.19(a) for LCMA 1);

3. Trap tag requirements to allow for alternatively-tagged traps (§ 697.19(i)); and

4. LCMA designation requirements to allow fishing with experimental traps in LCMA 3 without an LCMA 3 designation on a Federal permit (§ 697.4(a)(7)(i)).

The purpose of this lobster study is to track migration in the Gulf of Maine/Georges Bank stock area, estimate growth rates via imaging technology and direct measurements, and characterize catch-per-unit-effort and spatial distribution of egg-bearing females. This study will expand on data collected in 2015 from a New Hampshire Fish and Game and ALOA's fishery dependent lobster survey, which gathered some information on the spatial and temporal distribution of mature lobsters in the Gulf of Maine/Georges Bank area.

Trawls will be compliant with the Atlantic Large Whale Take Reduction Plan and consistent with LCMA 1 trap standards. Sampling will occur from June to July. Trawls will be hauled no more than 8 times over the 40-day study period. Researchers have selected four primary research sites and one alternate site. Trawls will be initially deployed by the vessel's crew alone, but all hauling activities will be supervised by ME DMR staff. All lobsters caught will be measured, tagged, and returned to the water. All other species will be immediately returned to the sea. No catch from the study will be landed for sale.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. We may grant EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. The EFP would prohibit any fishing activity conducted outside the scope of the exempted fishing activities.

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

Dated: April 30, 2018.

Alan D. Risenhoover,

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

[FR Doc. 2018–09385 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG198

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors on May 22 through May 24, 2018.

DATES: The CCC will begin at 1 p.m. on Tuesday, May 22, 2018, recess at 4:30 p.m.; and reconvene at 8:30 a.m. on Wednesday, May 23, 2018, recess at 4:30 p.m.; and reconvene at 8:30 a.m. Thursday, May 24, 2018 and adjourn at 5 p.m. or when business is complete. The Council Communications Group (CCG) will meet Tuesday, May 22, 2018 at 8:30 a.m., recess at 5 p.m.; and reconvene at 8:30 a.m. on Wednesday, May 23, 2018, adjourn at 5 p.m.

ADDRESSES: The meeting will be held at Harrigan Centennial Hall, 330 Harbor Drive, Sitka, AK; Westmark Hotel, 330 Seward Street, Sitka, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, at (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, May 22, 2018 through Thursday, May 24, 2018

CCC Session: The agenda for the CCC's plenary session will include the following issues.

(1) Budget Update
(2) National Bycatch Reduction Policy
(3) Electronic Monitoring Policy Directive
(4) Data Modernization
(5) Development of Electronic Monitoring in the North Pacific
(6) Legislative Update
(7) Recusal Policy
(8) Ecosystem Based Fishery Management Regional Implementation Plans
(9) Exempted Fishing Permits
(10) Best Scientific Information Available
(11) NMFS Policy Directive
(12) Allocation Reviews
(13) Research Priorities
(14) Aquaculture
(15) International Affairs/Seafood Inspection
(16) Regulatory Reform
(17) Recreational Fisheries Overview
(18) Citizen Science
(19) NEFMC Program Review
(20) NOAA Fisheries website Transition
(21) CCC Workgroup Reports (communications group, habitat committee, scientific coordination subcommittee)
(22) CCC Terms of Reference
(23) Other Business

The CCG agenda will include the following issues:

(1) Communication and technology tools and procedures
(2) Promoting the regional Council system
(3) Communicating effectively using social media
(4) Public comment/input outside of Council meetings/public hearings
(5) Working effectively with the news media
(6) Regional and national communications coordination between councils and NOAA
(7) Council and advisory body meeting communication protocols
(8) Education programs and training of Council/staff
(9) Publications and outreach
(10) Wrap up: Path forward

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*.

Public Comment

Public comment letters will be accepted and should be submitted either electronically to Diana Evans, Council staff: *diana.evans@noaa.gov* or through the mail: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 27, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–09342 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Assessment of the Social and Economic Impact of Hurricanes and Other Climate Related Natural Disasters on Commercial and Recreational Fishing Industries in the Eastern, Gulf Coast and Caribbean Territories of the United States.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 18,747.

Average Hours Per Response: 15–20 minutes.

Burden Hours: 9,373.

Needs and Uses: This request is for a new information collection.

The NOAA Fisheries Office of Science and Technology's Economics and Social Analysis Division seeks to conduct assessments of the social and economic impacts from hurricanes and other climate related natural disasters on commercial and recreational fishing industries in the eastern, gulf coast and Caribbean territories of the United States. It seeks to collect data on the immediate and long-term disruption and impediments to recovery of normal business practices to the commercial and recreational fishing industries. Data would be collected from commercial and recreational for hire fishermen, fish dealers, bait and tackle stores, marinas and other businesses dependent on the fishing industry for livelihood. The data will improve research and analysis of potential fishery management actions by understanding the immediate effects and/or long-term compounding effects of natural disasters on communities most dependent on commercial and recreational fishing. This data collection is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and essential for implementing National Standard 8, which calls for the sustained participation of fishing communities.

Affected Public: Individuals or households; business or other for profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 30, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–09375 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG053

Notice of Intent To Prepare an Environmental Impact Statement

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

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice announces that NMFS intends to prepare an Environmental Impact Statement (EIS) to inform its decision of whether to determine that a resource management plan (RMP) jointly developed by the Washington Department of Fish and Wildlife (WDFW) and the Puget Sound Tribes (Tribes), collectively the co-managers, meets requirements under Limit 6 of the

ESA 4(d) rule for the ESA-listed Puget Sound Chinook salmon Evolutionarily Significant Unit (ESU), which is listed as threatened under the Endangered Species Act (ESA). The purpose of the RMP is to manage commercial, recreational, ceremonial, and subsistence salmon fisheries potentially affecting the Puget Sound Chinook ESU within the marine and freshwater areas of Puget Sound, from the entrance of the Strait of Juan de Fuca inward, including fisheries under the jurisdiction of the Pacific Salmon Commission's Fraser River Panel. In order for NMFS to make a positive determination under Limit 6 on the RMP, NMFS must conclude that the RMP's management framework is consistent with the criteria under Limit 6. Limit 6 applies to RMPs developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes within the continuing jurisdiction of *United States* v. *Washington* or *United States* v. *Oregon*. NMFS provides this notice to advise other agencies and the public of our plan to analyze effects related to approval and implementation of the RMP and to obtain suggestions and information that may be useful to the scope of issues and alternatives to include in the EIS.

DATES: Written or electronic scoping comments must be received at the appropriate address or email mailbox (see **ADDRESSES**) on or before June 4, 2018.

ADDRESSES: Written comments should be sent to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 1201 NE Lloyd Boulevard. Suite 1100, Portland, OR 97232. Comments may also be sent by email to *ps2018rmp.wcr@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Emi Kondo, NMFS West Coast Region, telephone: 503–736–4739, email: *emi.kondo@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Puget Sound Chinook Salmon ESU was listed as threatened under the ESA in 1999 (64 FR 14308, March 24, 1999). The definition of the ESU has been revised twice to include specific artificial propagation programs (70 FR 37160, June 28, 2005; 79 FR 20802, April 14, 2014). The current description of the ESU includes naturally spawned Chinook salmon originating from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound, and the Strait of Georgia; also included are Chinook salmon from 26 artificial propagation programs (79 FR 20802, April 14, 2014).

Puget Sound Chinook salmon have a complex life history, migrating from their natal streams throughout Puget Sound to the Pacific Ocean, where they generally spend one to three years before returning to their natal streams, primarily as three- and four-year-old adults. In their ocean migration, they travel north along the west coast into Canadian, and at times as far north as Alaskan, waters. In doing so, they are caught in a broad range of fisheries, which are managed by an array of agencies, bodies, and governments including NMFS, the States of Washington, Oregon, and Alaska, more than 20 Native American tribal jurisdictions, the North Pacific Fisheries Management Council, the Pacific Fisheries Management Council, and the Pacific Salmon Commission.

Section 4(d) of the ESA (16 U.S.C. 1531(d)) requires the Secretary of Commerce (Secretary) to adopt such regulations that are deemed necessary and advisable for the conservation of species listed as threatened. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a)(1). Those section 9(a)(1) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) the relevant listed species. In 2000, NMFS published a rule, under section 4(d), that specified take prohibitions for several ESA-listed salmon ESUs, including Puget Sound Chinook salmon (65 FR 42422, July 10, 2000). NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to specified categories of activities that contribute to conserving listed salmonids or are governed by a program that adequately limits impacts on listed salmonids; therefore, the 4(d) rule included 13 limits on the application of the ESA section 9(a)(1) take prohibitions. Limit 6 of the 4(d) rule applies to activities in compliance with joint tribal/state plans (*e.g.,* RMPs) developed within the continuing jurisdiction of *United States* v. *Washington* or *United States* v. *Oregon*. The co-managers developed an RMP that NMFS determined was consistent with Limit 6 and was implemented from 2011 to 2014. Since the expiration of that RMP after 2014 fisheries, the fishery has since been managed on a year-to-year basis. The co-managers are currently developing an updated RMP, the Comprehensive Management Plan for Puget Sound Chinook: Harvest Management Component, to guide conservation and harvest of Puget Sound Chinook salmon in Washington for 10 years.

Once the co-managers have submitted the RMP for NMFS' approval, NMFS must make a determination under Limit 6 of the 4(d) rule whether the co-managers' RMP meets the criteria of the 4(d) rule and whether it does or does not appreciably reduce the likelihood of survival and recovery of Puget Sound Chinook Salmon ESU (50 CFR 223.203(b)(6)(i)). This determination is a Federal action that requires review under NEPA.

Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. NMFS has determined that an EIS should be prepared under NEPA for the purpose of informing our determination under Limit 6 of the 4(d) rule. We will prepare an EIS in accordance with NEPA requirements, as amended (42 U.S.C. 4321 *et seq.*); NEPA implementing regulations (40 CFR 1500–1508); and other Federal laws, regulations, and policies.

The Proposed Action for analysis in the Final Environmental Impact Statement is NMFS's approval of a Puget Sound Chinook Harvest Resource Management Plan which NMFS determines would adequately address the criteria established for Limit 6 of the ESA 4(d) rule for the ESA-listed Puget Sound Chinook Salmon ESU. NMFS' purpose for the proposed action is to respond to the co-manager's request for an exemption from the take prohibitions of section 9 of the ESA for commercial, recreational, and tribal salmon harvest programs included in an RMP for approval under Limit 6 of the ESA 4(d) rule for the ESA-listed Puget Sound Chinook Salmon Evolutionarily Significant Unit (ESU). NMFS' need for the proposed action is two-fold: To ensure the sustainability and recovery of Puget Sound Chinook salmon; and to facilitate, as appropriate, tribal treaty and non-tribal fishing opportunities as described under the RMP, consistent with tribal treaty rights and court rulings in *United States* v. *Washington*.

Development of Initial Alternatives

NMFS has preliminarily identified the following three alternatives for the public to consider.

Mixed Escapement and Exploitation Rate Alternative (Proposed Action):

Make a 4(d) determination on an RMP that utilizes a mixture of management-unit-specific escapement thresholds and exploitation rate ceilings.

Fixed Management Unit Escapement Goal Alternative: Make a 4(d) determination on an RMP that sets fixed escapement goals for Puget Sound Chinook management units.

No-action Alternative (No-fishing Alternative): Under this alternative, NMFS would not make a determination on the RMP; therefore, there would be no authorized take of Puget Sound Chinook salmon in Puget Sound salmon fisheries through the 4(d) rule. Although this alternative would not meet the purpose and need of the proposed action, a No-action Alternative is required in our NEPA analysis.

Request for Comments

NMFS requests data, comments, pertinent information, or suggestions from the public, other concerned governmental agencies, the scientific community, tribes, the business community, or any other interested party regarding the proposed action discussed in this notice. We will consider all comments we receive that are relevant to the proposed action and relevant to complying with the requirements of NEPA. We particularly seek specific comments concerning:

(1) The direct, indirect, and cumulative effects that implementation of any reasonable alternative could have on endangered and threatened species, and other non-ESA-listed species and their habitats;

(2) Other reasonable alternatives (in addition to the initial alternatives presented in this notice), and their associated effects. NMFS is particularly interested in alternatives that include ecosystem considerations, including the conservation and harvest of Puget Sound Chinook salmon, recovery of the ESA-listed Southern Resident killer whales, and needs of other wildlife;

(3) Measures that would minimize and mitigate potentially adverse effects of the proposed action; and

(4) Other plans or projects that might be relevant to this project.

The EIS will analyze the effects that the various alternatives would have on salmon and fish species in Puget Sound, as well as the other aspects of the human environment. These aspects may include other fish, habitat, marine nutrient transport, seabirds, marine mammals, marine invertebrates, ESA-listed species, vegetation, socioeconomics, environmental justice, cultural resources, and the cumulative impacts of the alternatives.

Authority: 42 U.S.C. 4321 *et seq.;* 40 CFR 1500–1508; and Companion Manual for NOAA Administrative Order 216–6A, 82 FR 4306.

Dated: April 26, 2018.

Angela Somma,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. 2018–09337 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Region Gear Identification Requirements.

OMB Control Number: 0648–0352.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 811.

Average Hours Per Response: 15 minutes.

Burden Hours: 648.

Needs and Uses: This request is for extension of a currently approved information collection.

The success of fisheries management programs depends significantly on regulatory compliance. The requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings. The regulations specify that fishing gear must be marked with the vessel's official number, Federal permit or tag number, or some other specified form of identification. The regulations further specify how the gear is to be marked (*e.g.,* location and color). Law enforcement personnel rely on gear marking information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. Gear violations are more readily prosecuted when the gear is marked, and this allows for more cost-effective enforcement. Gear marking helps ensure that a vessel harvests fish only from its own traps/pots/other gear are not illegally placed. Cooperating fishermen also use the gear marking numbers to report suspicious or non-compliant activities that they observe, and to report placement or occurrence of gear in unauthorized areas. The identifying number on fishing gear is used by the National Marine Fisheries Service (NMFS), the United States Coast Guard (USCG), and other marine agencies in issuing regulations, prosecutions, and other enforcement actions necessary to support sustainable fisheries behaviors as intended in regulations. Regulation-compliant fishermen ultimately benefit from these requirements, as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

Affected Public: Business or other for-profit organizations.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 30, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–09372 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG209

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 public meeting of its Skate Advisory Panel 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 23, 2018 at 9 a.m.

ADDRESSES: The meeting will be held at the Providence Biltmore, 10 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700.

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: The Advisory Panel will review draft alternatives to prolong the wing fishery that focus on modifying the seasonal skate wing possession limits including a potential intermediate possession limit. Other business will be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 30, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–09395 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG208

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Atlantic Mackerel, Squid, and Butterfish (MSB) Committee and MSB Advisory Panel of the Mid-Atlantic Fishery Management Council (Council) will hold a joint meeting via webinar.

DATES: The meeting will be held on Thursday, May 17, 2018 beginning at 8:30 a.m. and conclude by noon. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only audio connection. Connection details are posted at *http://www.mafmc.org/council-events/2018/joint-msb-committee-ap-meeting*.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org*.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop recommendations for the Council regarding modifications to the Atlantic mackerel commercial fishery closure possession limits. Currently no Atlantic mackerel possession is allowed by federally-permitted commercial vessels once 100% of the commercial landings quota is reached. The Council is considering changing the trip limit once 100% of the commercial landings quota is reached. The Council is scheduled to take final action on this issue at its June 2018 Council meeting via a Framework Adjustment to the MSB Fishery Management Plan.

Special Accommodations

The 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 any meeting date.

Dated: April 30, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–09394 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG210

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 public meeting of its Skate Committee 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 23, 2018 at 1 p.m.

ADDRESSES: The meeting will be held at the Providence Biltmore, 10 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700.

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: The Committee will review draft alternatives to prolong the wing fishery that focus on modifying the seasonal skate wing possession limits including a potential intermediate possession limit. Other business will be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 30, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–09396 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Island Pelagic Longline Fisheries; Short-tailed Albatross-Fisheries Interaction Recovery Reporting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 2, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Gabriel Forrester, NMFS, (808) 725–5179 or *Gabriel.Forrester@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. Federal regulations require the operator of a vessel with a Hawaii longline limited access permit vessel to notify NMFS if an endangered short-tailed albatross is hooked or entangled during fishing operations. Following the retrieval of the albatross from the ocean the vessel operator must record the condition of the bird on a recovery data form. A veterinarian will use the information to provide advice to the captain for caring for the bird. If the albatross is dead, the captain must attach an identification tag to the carcass to assist the U.S. Fish and Wildlife Service (USFWS) biologists in subsequent studies. This collection of information is one of the terms and conditions contained in the Endangered Species Act Section 7 biological opinion issued by USFWS, and is intended to maximize the probability of the long-term survival of short-tailed albatrosses accidentally taken by longline gear.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email or electronic forms, or mail or facsimile transmission of paper forms within 72 hours of landing.

III. Data

OMB Control Number: 0648–0456.

Form Number(s): None.

Type of Review: Regular (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 1.

Estimated Time per Response: Notification, reporting, and tagging and specimen handling, 1 hour each.

Estimated Total Annual Burden Hours: 3.

Estimated Total Annual Cost to Public: $80 in recordkeeping/reporting costs, mainly for at-sea communication costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–09373 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF850

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off of New York

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Statoil Wind U.S. LLC (Statoil) to incidentally harass, by Level B harassment only, marine mammals during marine site characterization surveys off the coast of New York as part of the Empire Wind Project in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0512) (Lease Area) and coastal waters where one or more cable route corridors will be established.

DATES: This Authorization is valid for one year from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Jordan Carduner, 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 by visiting the internet at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On November 9, 2017, NMFS received a request from Statoil for an IHA to take marine mammals incidental to marine site characterization surveys off the coast of New York as part of the Empire Wind Project in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0512) and coastal waters where one or more cable route corridors will be established. A revised application was received on January 8, 2018. NMFS deemed that request to be adequate and complete. Statoil's request is for take of 11 marine mammal species by Level B harassment. Neither Statoil nor NMFS expects serious injury or mortality to result from this activity and the activity is expected to last no more than one year, therefore, an IHA is appropriate.

Description of the Specified Activity

Statoil plans to conduct marine site characterization surveys in the marine environment of the approximately 79,350-acre Lease Area located approximately 11.5 nautical miles (nm) from Jones Beach, New York (see Figure 1 in the IHA application). Additionally, one or more cable route corridors will be established between the Lease Area and New York, identified as the Cable Route Area (see Figure 1 in the IHA application). Cable route corridors are anticipated to be 152 meters (m, 500 feet (ft)) wide and may have an overall length of as much as 135 nm. For the purpose of this IHA, the survey area is designated as the Lease Area and cable route corridors. Water depths across the Lease Area range from approximately 22 to 41 m (72 to 135 ft) while the cable route corridors will extend to shallow water areas near landfall locations. Surveys will last for approximately 20 weeks. This schedule is based on 24-hour operations and includes potential down time due to inclement weather.

The purpose of the surveys are to support the siting, design, and deployment of up to three meteorological data buoy deployment areas and to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of the proposed offshore wind farm. Underwater sound resulting from Statoil's site characterization surveys has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

A detailed description of the planned survey activities, including types of survey equipment planned for use, is provided in the **Federal Register** notice for the proposed IHA (83 FR 7655; February 22, 2018). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not repeated here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

NMFS published a notice of proposed IHA in the **Federal Register** on February 22, 2018 (83 FR 7655). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission) and a comment letter from a group of non-governmental organizations (NGOs), including Natural Resources Defense Council, the Wildlife Conservation Society, the National Wildlife Federation, the Conservation Law Foundation, Defenders of Wildlife, Surfrider Foundation, International Fund for Animal Welfare, the Nature Conservancy, and Southern Environmental Law Center. NMFS has posted the comments online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* The following is a summary of the public comments received and NMFS's responses.

Comment 1: The Commission expressed concern that the method used to estimate the numbers of takes, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS' 24-hour reset policy and recommended that NMFS share the rounding criteria with the Commission in an expeditious manner.

NMFS Response: NMFS appreciates the Commission's ongoing concern in this matter. Calculating predicted takes is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative adjustments in other situations. We believe, however, that the methodology used for take calculation in this IHA remains appropriate and is not at odds with the 24-hour reset policy the Commission references. We look forward to continued discussion with the Commission on this matter and will share the rounding guidance as soon as it is ready for public review.

Comment 2: The Commission recommended that, until behavioral thresholds are updated, NMFS require applicants to use the 120-decibel (dB) re 1 micropascal (μPa), rather than 160-dB re 1μPa, threshold for acoustic, non-impulsive sources (*e.g.,* sub-bottom profilers/chirps, echosounders, and other sonars including side-scan and fish-finding).

NMFS Response: Certain sub-bottom profiling systems are appropriately considered to be impulsive sources (*e.g.,* boomers, sparkers); therefore, the threshold of 160 dB re 1μPa will continue to be used for those sources. Other source types referenced by the Commission (*e.g.,* chirp sub-bottom profilers, echosounders, and other sonars including side-scan and fish-finding) produce signals that are not necessarily strictly impulsive; however, NMFS finds that the 160-dB rms threshold is most appropriate for use in evaluating potential behavioral impacts

to marine mammals because the temporal characteristics (*i.e.,* intermittency) of these sources are better captured by this threshold. The 120-dB threshold is associated with continuous sources and was derived based on studies examining behavioral responses to drilling and dredging. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005). Examples of sounds that NMFS would categorize as continuous are those associated with drilling or vibratory pile driving activities. Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Thus, signals produced by these source types are not continuous but rather intermittent sounds. With regard to behavioral thresholds, we consider the temporal and spectral characteristics of signals produced by these source types to more closely resemble those of an impulse sound rather than a continuous sound. The threshold of 160 dB re 1µPa is typically associated with impulsive sources, which are inherently intermittent. Therefore, the 160 dB threshold (typically associated with impulsive sources) is more appropriate than the 120 dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources.

Comment 3: The Commission requested clarification regarding certain issues associated with NMFS's notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

NMFS Response: The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Importantly, such renewals would be limited to circumstances where: the activities are identical or nearly identical to those analyzed in the proposed IHA; monitoring does not indicate impacts that were not previously analyzed and authorized; and, the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as they are for all IHAs. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

Comment 4: The commenters expressed concern regarding the marine mammal density estimates used to calculate take. Specifically, the commenters stated the estimates derived from models presented in Roberts *et al.* (2016) may underrepresent density and seasonal presence of large whales in the New York Bight region, and recommended that NMFS consider additional data sources in density modeling for future analyses of estimated take, including initial data from the newly launched New York Bight whale monitoring program and other State efforts, existing passive acoustic monitoring data, and opportunistic marine mammal sightings data available from whale watching records. The commenters further asserted that the method used to estimate densities of North Atlantic right whales does not account for the potentially elevated seasonal presence of right whales in the New York Bight during March and April and recommended that NMFS adjust density estimates it derived from Roberts *et al.* (2016) to account for the higher relative presence of right whales in the New York Bight for the months when the surveys are expected to occur.

NMFS Response: NMFS has determined that the data provided by Roberts *et al.* (2016) represents the best available information concerning marine mammal density in the survey area and has used it accordingly. NMFS has considered other available information, including that cited by the commenters, and determined that it does not contradict the information provided by Roberts *et al.* (2016). The information discussed by the commenters does not provide data in a format that is directly usable in an acoustic exposure analysis and the commenters make no useful recommendation regarding how to do so. We will review the data sources recommended by the commenters and will consider their suitability for inclusion in future analyses, as requested by the commenters. Regarding the method used to estimate cetacean densities, NMFS determined the method used is conservative in that the highest seasonal density estimate was used to estimate take over the duration of the entire survey, including during seasons that would be expected to have lower densities. In the case of the North Atlantic right whale, the season with the highest predicted density was Spring, thus right whale density in March and April was in fact used to predict the species' density for the duration of the survey.

Comment 5: Regarding mitigation measures, the NGOs recommended NMFS impose a restriction on site assessment and characterization activities that have the potential to injure or harass the North Atlantic right whale from November 1st to April 30th.

NMFS Response: In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider 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; and (2) the practicability of the measures for applicant implementation, which may consider such things as relative cost and impact on operations.

Statoil determined the planned duration of the survey based on their data acquisition needs, which are largely driven by the Bureau of Ocean Energy Management's (BOEM's) data collection requirements prior to required submission of a construction and operations plan (COP). Any effort on the part of NMFS to restrict the months during which the survey could operate would likely have the effect of forcing the applicant to conduct additional months of surveys the following year, resulting in increased costs incurred by the applicant and additional time on the water with associated additional production of underwater noise which could have further potential impacts to marine mammals. Thus the time and area

restrictions recommended by the commenters would not be practicable for the applicant to implement and would to some degree offset the benefit of the recommended measure. In addition, our analysis of the potential impacts of the survey on right whales does not indicate that such closures are warranted, as potential impacts to right whales from the survey activities would be limited to short-term behavioral responses; no marine mammal injury is expected as a result of the survey, nor is injury authorized in the IHA. Thus, in this case, the limited potential benefits of time and area restrictions, when considered in concert with the impracticability and increased cost on the part of the applicant that would result from such restrictions, suggests time and area restrictions are not warranted in this case. Existing mitigation measures, including exclusion zones, ramp-up of survey equipment, and vessel strike avoidance measures, are sufficiently protective to ensure the least practicable adverse impact on species or stocks and their habitat.

Comment 6: Regarding mitigation measures, the NGOs recommended that NMFS require that geophysical surveys commence, with ramp-up, during daylight hours only to maximize the probability that North Atlantic right whales are detected and confirmed clear of the exclusion zone, and that, if a right whale were detected in the exclusion zone during nighttime hours and the survey is shut down, developers should be required to wait until daylight hours for ramp-up to commence.

NMFS Response: We acknowledge the limitations inherent in detection of marine mammals at night. However, similar to the discussion above regarding time and area closures, restricting the ability of the applicant to ramp-up surveys only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary, which could result in the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus the restriction suggested by the commenters would not be practicable for the applicant to implement. In addition, as described above, potential impacts to marine mammals from the survey activities would be limited to short-term behavioral responses. Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. No injury is expected to result even in the absence of mitigation, given the very small estimated Level A harassment zones. In the event that NMFS imposed the restriction suggested by the commenters, potentially resulting in a second survey season of surveys required for the applicant, vessels would be on the water introducing noise into the marine environment for a significantly extended period of time. Therefore, in addition to practicability concerns for the applicant, the restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have failed to demonstrate that such a requirement would even result in a net benefit for affected marine mammals. Therefore, in consideration of potential effectiveness of the recommended measure and its practicability for the applicant, NMFS does not believe that restricting survey start-ups to daylight hours is warranted in this case.

However, in recognition of the concerns raised by the commenters, we have added a mitigation requirement to the IHA that shutdown of geophysical survey equipment is required upon confirmed passive acoustic monitoring (PAM) detection of a North Atlantic right whale at night, even in the absence of visual confirmation, except in cases where the acoustic detection can be localized and the right whale can be confirmed as being beyond the 500 m exclusion zone (EZ); equipment may be re-started no sooner than 30 minutes after the last confirmed acoustic detection.

Comment 7: The NGOs recommended that NMFS require a 500 m EZ for marine mammals and sea turtles (with the exception of dolphins that voluntarily approach the vessel). Additionally, the NGOs recommended that protected species observers (PSOs) monitor to an extended 1,000 m EZ for North Atlantic right whales.

NMFS Response: Regarding the recommendation for a 1,000 m EZ specifically for North Atlantic right whales, we have determined that the 500 m EZ, as required in the IHA, is sufficiently protective. We note that mitigation measures also require that PSOs monitor to the extent of the Level B zone (in this case, 1,160 m), or as far as possible if the extent of the level B zone is not visible, thus PSOs would be aware of any right whales within 1,000 m of the vessel and would be able to call for shutdown if a right whale were approaching the 500 m EZ. Regarding the commenters' recommendation to require a 500 m EZ for all marine mammals (except dolphins that approach the vessel) we have determined the EZs as currently required in the IHA (described in Mitigation Measures, below) are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. The EZs would prevent all potential instances of marine mammal injury (though in this instance, injury would not be an expected outcome even in the absence of mitigation due to very small predicted isopleths corresponding to the Level A harassment threshold (Table 4) and would further prevent some instances of behavioral harassment, as well as limiting the intensity and/or duration of behavioral harassment that does occur. As NMFS has determined the EZs currently required in the IHA to be sufficiently protective, we do not think expanded EZs, beyond what is required in the IHA, are warranted. With respect to EZs for sea turtles, we do not have the statutory authority under the MMPA to require mitigation measures specific to sea turtles.

Comment 8: The NGOs recommended that NMFS should not allow modifications of the radii of the EZs based on sound source validation data, except in the event that sound source validation data support the extension of the EZs.

NMFS Response: Our analyses, including the analysis of the mitigation measures that would ensure the least practicable adverse impact on species or stocks and their habitat, are based on the best available information. At the time of Statoil's submission of the IHA application, we determined the data presented in Crocker and Fratantonio (2016) represented the best available information on sound levels associated with high-resolution geophysical (HRG) survey equipment planned for use by Statoil. If new information on sound levels associated with HRG survey used by Statoil becomes available, including data from field verification studies, we will determine at that time whether that new information represents the best available information, and if so, whether that information warrants revision of marine mammal EZs. The commenters requested that any modification of the EZs be limited to potential expansion of the EZs, but provide no substantive rationale for why a zone should not be modified to be contracted if sound source verification indicates that such a modification is warranted; therefore there is no basis to think that such a

limitation would satisfy the standard that mitigation measures must ensure the least practicable adverse impact on species or stocks and their habitat.

Comment 9: The NGOs recommended that a combination of visual monitoring by PSOs and PAM should be required 24 hours per day, and that a combination of PAM and continual visual monitoring using night vision and infra-red should be required at night. The NGOs further recommended that at least two PSOs should be required to be on shift at any one time during daylight hours.

NMFS Response: Per the terms of BOEM's lease stipulations, the applicant is required to implement marine mammal monitoring, including having four visual PSOs and two PAM operators available, with at least one visual PSO on duty at all times and at least one PAM operator on duty at night. We have reviewed these minimum requirements and find that they are sufficient to meet the MMPA standard that mitigation measures must ensure the least practicable adverse impact on species or stocks and their habitat. We have determined the requirements for visual and acoustic monitoring are sufficient to ensure the EZs and Watch Zone are adequately monitored. While PAM can be beneficial to supplement visual monitoring, especially in low-visibility conditions, its utility is limited in that it is only beneficial when animals are vocalizing. When potential benefits of a 24 hour PAM requirement are considered in concert with the potential increased costs on the part of the applicant that would result from such a requirement, we determined a requirement for 24 hour PAM operation is not warranted in this case.

Comment 10: The NGOs recommended that NMFS incentivize offshore wind developers to partner with scientists to collect data that would increase the understanding of the effectiveness of night vision and infra-red technologies in the New York Bight and broader region, with a view towards greater reliance on these technologies to commence surveys during nighttime hours in the future.

NMFS Response: NMFS agrees with the NGOs that improved data on relative effectiveness of night vision and infra-red technologies would be beneficial and could help to inform future efforts at detection of marine mammals during nighttime activities. We have no authority to incentivize such partnerships under the MMPA. However, we will encourage coordination and communication between offshore wind developers and researchers on effectiveness of night vision and infra-red technologies. In recognition of the commenters' concerns, we have also added a requirement that the final report submitted to NMFS must include an assessment of the effectiveness of night vision equipment used during nighttime surveys, including comparisons of relative effectiveness among the different types of night vision equipment used.

Comment 11: The NGOs recommended that NMFS require a 10 knot speed restriction on all project-related vessels transiting to/from the survey area from March 1st through April 30th and that all project vessels operating within the survey area should be required to maintain a speed of 10 knots or less during the entire survey period.

NMFS Response: NMFS has analyzed the potential for ship strike resulting from Statoil's activity and has determined that the mitigation measures specific to ship strike avoidance are sufficient to avoid the potential for ship strike. These include: A requirement that all vessel operators comply with 10 knot (18.5 kilometer (km)/hr) or less speed restrictions in any Seasonal Management Area (SMA) or Dynamic Management Area (DMA); a requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500 m minimum separation distance has been established; and a requirement that, if a North Atlantic right whale is sighted in a vessel's path, or within 100 m to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Additional measures to prevent the potential for ship strike are discussed in more detail below (see the Mitigation section). We have determined that the ship strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. We also note that vessel strike during surveys is extremely unlikely based on the low vessel speed; the survey vessel would maintain a speed of approximately 4 knots (7.4 kilometers per hour) while transiting survey lines.

Comment 12: The NGOs recommended that NMFS account for the potential for indirect ship strike risk resulting from habitat displacement in our analyses.

NMFS Response: NMFS determined that habitat displacement was not an expected outcome of the specified activity, therefore an analysis of potential impacts to marine mammals from habitat displacement is not warranted in this case.

Comment 13: The NGOs recommended that NMFS fund analyses of recently collected marine mammal sighting and acoustic data from 2016 and continue to fund and expand surveys and studies to (i) improve our understanding of distribution and habitat use of marine mammals in the New York Bight and the broader mid-Atlantic region, and (ii) enhance the resolution of population genetic structure for humpback, fin, and blue whales. The NGOs also recommended that NMFS support an expert workshop to consider the data referred to in Comment 8, and any new information necessary to inform seasonal restrictions and mitigation measures in time for the November 2018 North Atlantic right whale migration period.

NMFS Response: We agree with the NGOs that analyses of recently collected sighting and acoustic data, as well as continued marine mammal surveys, are warranted, and we welcome the opportunity to participate in fora where implications of such data for potential mitigation measures would be discussed; however, we have no statutory authority or ability to require funding of such analyses and surveys, nor do we have the ability or authority to fund such a workshop. We note that NMFS is undertaking numerous efforts relative to recovering right whales; these include expert working groups focused on specific aspects of recovery such as ship strike mitigation and entanglement mitigation, including two subgroups under the Atlantic Large Whale Take Reduction Plan which both met within the previous month, with a further full team meeting planned for fall 2018.

Description of Marine Mammals in the Area of Specified Activity

Sections 3 and 4 of Statoil's IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*) and more general information about these species (*e.g.,* physical and

behavioral descriptions) may be found on NMFS's website (*www.fisheries.noaa.gov/species-directory*).

Table 1 lists all species with expected potential for occurrence in the survey area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow the Committee on Taxonomy (2017). PBR is 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 (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR is included here as gross indicators of the status of the species and other threats.

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 or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2017 draft SARs (*e.g.,* Hayes *et al.,* 2018). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2017 draft SARs (Hayes *et al.,* 2018).

TABLE 1—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA

Common name	Stock	NMFS MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV,N_{min}, most recent abundance survey) [2]	PBR [3]	Occurrence and seasonality in the NW Atlantic OCS
Toothed whales (Odontoceti)					
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W North Atlantic	-; N	48,819 (0.61; 30,403; n/a)	304	rare.
Atlantic spotted dolphin (*Stenella frontalis*)	W North Atlantic	-; N	44,715 (0.43; 31,610; n/a)	316	rare.
Bottlenose dolphin (*Tursiops truncatus*)	W North Atlantic, Offshore	-; N	77,532 (0.40; 56,053; 2011)	561	Common year round.
Clymene dolphin (*Stenella clymene*)	W North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
Pantropical Spotted dolphin (*Stenella attenuata*).	W North Atlantic	-; N	3,333 (0.91; 1,733; n/a)	17	rare.
Risso's dolphin (*Grampus griseus*)	W North Atlantic	-; N	18,250 (0.46; 12,619; n/a)	126	rare.
Short-beaked common dolphin (*Delphinus delphis*).	W North Atlantic	-; N	70,184 (0.28; 55,690; 2011)	557	Common year round.
Striped dolphin (*Stenella coeruleoalba*)	W North Atlantic	-; N	54,807 (0.3; 42,804; n/a)	428	rare.
Spinner Dolphin (*Stenella longirostris*)	W North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
White-beaked dolphin (*Lagenorhynchus albirostris*).	W North Atlantic	-; N	2,003 (0.94; 1,023; n/a)	10	rare.
Harbor porpoise (*Phocoena phocoena*)	Gulf of Maine/Bay of Fundy	-; N	79,833 (0.32; 61,415; 2011)	706	Common year round.
Killer whale (*Orcinus orca*)	W North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
False killer whale (*Pseudorca crassidens*)	W North Atlantic	-; Y	442 (1.06; 212; n/a)	2.1	rare.
Long-finned pilot whale (*Globicephala melas*)	W North Atlantic	-; Y	5,636 (0.63; 3,464; n/a)	35	rare.
Short-finned pilot whale (*Globicephala macrorhynchus*).	W North Atlantic	-; Y	21,515 (0.37; 15,913; n/a)	159	rare.
Sperm whale (*Physeter macrocephalus*)	North Atlantic	E; Y	2,288 (0.28; 1,815; n/a)	3.6	Year round in continental shelf and slope waters, occur seasonally to forage.
Pygmy sperm whale [4] (*Kogia breviceps*)	W North Atlantic	-; N	3,785 (0.47; 2,598; n/a)	26	rare.
Dwarf sperm whale [4] (*Kogia sima*)	W North Atlantic	-; N	3,785 (0.47; 2,598; n/a)	26	rare.
Cuvier's beaked whale (*Ziphius cavirostris*)	W North Atlantic	-; N	6,532 (0.32; 5,021; n/a)	50	rare.
Blainville's beaked whale [5] (*Mesoplodon densirostris*).	W North Atlantic	-; N	7,092 (0.54; 4,632; n/a)	46	rare.
Gervais' beaked whale [5] (*Mesoplodon europaeus*).	W North Atlantic	-; N	7,092 (0.54; 4,632; n/a)	46	rare.
True's beaked whale [5] (*Mesoplodon mirus*)	W North Atlantic	-; N	7,092 (0.54; 4,632; n/a)	46	rare.
Sowerby's Beaked Whale [5] (*Mesoplodon bidens*).	W North Atlantic	-; N	7,092 (0.54; 4,632; n/a)	46	rare.
Rough-toothed dolphin *(Steno bredanensis*)	W North Atlantic	-; N	271 (1.0; 134; 2013)	1.3	rare.
Melon-headed whale (*Peponocephala electra*).	W North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
Northern bottlenose whale (*Hyperoodon ampullatus*).	W North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
Pygmy killer whale *(Feresa attenuata*)	W North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
Baleen whales (Mysticeti)					
Minke whale (*Balaenoptera acutorostrata*)	Canadian East Coast	-; N	2,591 (0.81; 1,425; n/a)	162	Year round in continental shelf and slope waters, occur seasonally to forage.
Blue whale (*Balaenoptera musculus*)	W North Atlantic	E; Y	Unknown (unk; 440; n/a)	0.9	Year round in continental shelf and slope waters, occur seasonally to forage.
Fin whale (*Balaenoptera physalus*)	W North Atlantic	E; Y	1,618 (0.33; 1,234; n/a)	2.5	Year round in continental shelf and slope waters, occur seasonally to forage.
Humpback whale (*Megaptera novaeangliae*)	Gulf of Maine	-; N	823 (0; 823; n/a)	2.7	Common year round.
North Atlantic right whale (*Eubalaena glacialis*).	W North Atlantic	E; Y	458 (0; 455; n/a)	1.4	Year round in continental shelf and slope waters, occur seasonally to forage.

TABLE 1—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA—Continued

Common name	Stock	NMFS MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV,N_{min}, most recent abundance survey) [2]	PBR [3]	Occurrence and seasonality in the NW Atlantic OCS
Sei whale (*Balaenoptera borealis*)	Nova Scotia	E; Y	357 (0.52; 236; n/a)	0.5	Year round in continental shelf and slope waters, occur seasonally to forage.
Earless seals (Phocidae)					
Gray seal [6] (*Halichoerus grypus*)	W North Atlantic	-; N	27,131 (0.10; 25,908; n/a)	1,554	Unlikely
Harbor seal (*Phoca vitulina*)	W North Atlantic	-; N	75,834 (0.15; 66,884; 2012)	2,006	Common year round.
Hooded seal (*Cystophora cristata*)	W North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.
Harp seal (*Phoca groenlandica*)	North Atlantic	-; N	Unknown (unk; unk; n/a)	Undet	rare.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2016 Atlantic SARs.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] Abundance estimate includes both dwarf and pygmy sperm whales.

[5] Abundance estimate includes all species of *Mesoplodon* in the Atlantic.

[6] Abundance estimate applies to U.S. population only, actual abundance is believed to be much larger.

All species that could potentially occur in the survey area are included in Table 1. However, the temporal and/or spatial occurrence of 26 of the 37 species listed in Table 1 is such that take of these species is not expected to occur, and they are not discussed further beyond the explanation provided here. Take of these species is not anticipated either because they have very low densities in the project area, are known to occur further offshore than the project area, or are considered very unlikely to occur in the project area during the survey due to the species' seasonal occurrence in the area.

A detailed description of the species likely to be affected by Statoil's survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 7655; February 22, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not repeated here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*www.fisheries.noaa.gov/species-directory*) for generalized species accounts.

Information concerning marine mammal hearing, including marine mammal functional hearing groups, was provided in the **Federal Register** notice for the proposed IHA (83 FR 7655; February 22, 2018), therefore that information is not repeated here; please refer to that **Federal Register** notice for this information. For further information about marine mammal functional hearing groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Eleven marine mammal species (nine cetacean and two pinniped (both phocid) species) have the reasonable potential to co-occur with the survey activities (Table 7). Of the cetacean species that may be present, four are classified as low-frequency cetaceans (*i.e.,* North Atlantic right whale, humpback whale, fin whale, and minke whale), four are classified as mid-frequency cetaceans (*i.e.,* sperm whale, bottlenose dolphin, common dolphin and Atlantic white-sided dolphin), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Statoil's survey activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The **Federal Register** notice for the proposed IHA (83 FR 7655; February 22, 2018) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to that **Federal Register** notice for that information. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of the planned activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which informs both NMFS' consideration of ''small numbers'' 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, 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 are by Level B harassment, as use of the survey equipment has the potential to result in disruption of behavioral patterns for individual marine mammals. NMFS has determined take by Level A harassment is not an expected outcome of the activity and thus we do not authorize the take of any marine mammals by Level A harassment. This is discussed in greater detail below. As described previously, no mortality or serious injury is anticipated or authorized for this activity. Below we describe how the take is estimated for this project.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be

behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the take estimate.

Acoustic Thresholds

NMFS uses acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the sound source (*e.g.,* frequency, predictability, duty cycle); the environment (*e.g.,* bathymetry); and the receiving animals (hearing, motivation, experience, demography, behavioral context); and therefore can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.* 2011). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of Level B (behavioral) harassment. NMFS predicts that marine mammals may be behaviorally harassed when exposed to underwater anthropogenic noise above received levels 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* high resolution geophysical (HRG) equipment) or intermittent (*e.g.,* scientific sonar) sources. Statoil's activity includes the use of impulsive sources. Therefore, the 160 dB re 1 µPa (rms) criteria is applicable for analysis of Level B harassment.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Technical Guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, reflects the best available science, and better predicts the potential for auditory injury than does NMFS' historical criteria.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in Table 2 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.* As described above, Statoil's activity includes the use of intermittent and impulsive sources.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT IN MARINE MAMMALS

Hearing group	PTS onset thresholds	
	Impulsive *	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
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.

Note: *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 (Lpk) 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.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into estimating the area ensonified above the acoustic thresholds.

The survey would entail the use of HRG survey equipment. The distance to the isopleth corresponding to the threshold for Level B harassment was calculated for all HRG survey equipment with the potential to result in harassment of marine mammals (*i.e.,* the USBL and the sub-bottom profilers) based on source characteristics as described in Crocker and Fratantonio (2016) using the practical transmission loss (TL) equation: $TL = 15\log_{10}$. Of the survey equipment planned for use that has the potential to result in harassment of marine mammals, acoustic modeling indicated the Sig ELC 820 Sparker (a type of sub-bottom profiler) would be expected to produce sound that would propagate the furthest in the water (Table 3); therefore, for the purposes of the take calculation, it was assumed the Sig ELC 820 Sparker would be active during the entirety of the survey. Thus the distance to the isopleth corresponding to the threshold for Level B harassment for the Sig ELC 820 Sparker (1,166 m; Table 3) was used as the basis of the Level B take calculation for all marine mammals.

TABLE 3—PREDICTED RADIAL DISTANCES (m) FROM HRG SOURCES TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

HRG system	Survey equipment	Modeled distance to threshold (160 dB re 1 μPa)
Subsea Positioning/USBL	Sonardyne Ranger 2 USBL	74
Shallow penetration sub-bottom profiler	EdgeTech 512i	18
Medium penetration sub-bottom profiler	SIG ELC 820 Sparker	1,166

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups (Table 4), were also calculated by Statoil. The updated acoustic thresholds for impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2016) were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL_{cum}) and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that calculating Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers. Statoil used the NMFS optional User Spreadsheet to calculate distances to Level A harassment isopleths based on SEL_{cum} (shown in Appendix A of the IHA application) and used the practical spreading loss model (similar to the method used to calculate Level B isopleths as described above) to calculate distances to Level A harassment isopleths based on peak pressure. Modeled distances to isopleths corresponding to Level A harassment thresholds for the Sig ELC 820 Sparker are shown in Table 4.

TABLE 4—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Functional hearing group (Level A harassment thresholds)	SEL_{cum} [1]	Peak SPL_{flat}
Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	9.8	n/a
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	0	n/a
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	3.6	7.3
Phocid Pinnipeds (Underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	2.6	n/a

[1] Distances to isopleths based on SEL_{cum} were calculated in the NMFS optional User Spreadsheet based on the following inputs: Source level of 206 dB rms, source velocity of 2.06 meters per second, pulse duration of 0.008 seconds, repetition rate of 0.25 seconds, and weighting factor adjustment of 1.4 kHz. Isopleths shown for SEL_{cum} are different than those shown in the IHA application as one of the inputs used by the applicant was incorrect which resulted in outputs that were not accurate: The applicant entered an incorrect repetition rate of 4 seconds rather than the correct repetition rate of 0.25 seconds. NMFS therefore used the NMFS optional User Spreadsheet to calculate isopleths for SEL_{cum} for the Sig ELC 820 Sparker using the correct repetition rate.

In this case, due to the very small estimated distances to Level A harassment thresholds for all marine mammal functional hearing groups, based on both SEL_{cum} and peak SPL (Table 4), and in consideration of the mitigation measures, including marine mammal exclusion zones that greatly exceed the largest modeled isopleths to Level A harassment thresholds (see the Mitigation section for more detail) NMFS determined that the likelihood of Level A take of marine mammals occurring as a result of the survey is so low as to be discountable.

We note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree. The acoustic sources planned for use in Statoil's survey do not radiate sound equally in all directions but were designed instead to focus acoustic energy directly toward the sea floor. Therefore, the acoustic energy produced by these sources is not received equally in all directions around the source but is instead concentrated along some narrower plane depending on the beamwidth of the source. However, the calculated distances to isopleths do not account for this directionality of the sound source and are therefore conservative. For mobile sources, such as Statoil's planned survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The best available scientific information was considered in conducting marine mammal exposure estimates (the basis for estimating take). For cetacean species, densities calculated by Roberts *et al.* (2016) were used. The density data presented by Roberts *et al.* (2016) incorporates aerial and shipboard line-transect survey data from NMFS and from other organizations collected over the period 1992–2014. Roberts *et al.* (2016) modeled density from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controlled for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. In general, NMFS considers the models produced by Roberts *et al.* (2016) to be the best available source of data regarding cetacean density in the Atlantic Ocean. More information, including the model results and supplementary information for each model, is available online at: *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.*

For the purposes of the take calculations, density data from Roberts *et al.* (2016) were mapped within the boundary of the survey area for each survey segment (*i.e.,* the Lease Area survey segment and the cable route area survey segment; See Figure 1 in the IHA application) using a geographic information system. Monthly density data for all cetacean species potentially

taken by the planned survey was available via Roberts *et al.* (2016). Monthly mean density within the survey area, as provided in Roberts *et al.* (2016), were averaged by season (*i.e.,* Winter (December, January, February), Spring (March, April, May), Summer (June, July, August), Fall (September, October, November)) to provide seasonal density estimates. For the Lease Area survey segment, the highest average seasonal density as reported by Roberts *et al.* (2016) was used based on the planned survey dates of March through July. For the cable route area survey segment, the average spring seasonal densities within the maximum survey area were used, given the planned start date and duration of the survey within the cable route area.

Systematic, offshore, at-sea survey data for pinnipeds are more limited than those for cetaceans. The best available information concerning pinniped densities in the planned survey area is the U.S. Navy's Navy Operating Area (OPAREA) Density Estimates (NODEs) (DoN, 2007). These density models utilized vessel-based and aerial survey data collected by NMFS from 1998–2005 during broad-scale abundance studies. Modeling methodology is detailed in DoN (2007). The NODEs density estimates do not include density data for gray seals. For the purposes of this IHA, gray seal density in the project area was assumed to be the same as harbor seal density. Mid-Atlantic OPAREA Density Estimates (DoN, 2007) as reported for the spring and summer season were used to estimate pinniped densities for the purposes of the take calculations.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day of the survey is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and estimated trackline distance traveled per day by the survey vessel. The estimated daily vessel track line distance was determined using the estimated average speed of the vessel (4 knot) multiplied by 24 (to account for the 24 hour operational period of the survey). Using the maximum distance to the Level B harassment threshold of 1,166 m (Table 3) and estimated daily track line distance of approximately 177.8 km (110.5 mi), it was estimated that an area of 418.9 km^2 (161.7 mi^2) per day would be ensonified to the Level B harassment threshold.

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area, using estimated marine mammal densities as described above. In this case, estimated marine mammal density values varied between the Lease Area and cable route corridor survey areas, therefore the estimated number of each species taken per survey day was calculated separately for the Lease Area survey area and cable route corridor survey area. Estimated numbers of each species taken per day are then multiplied by the number of survey days to generate an estimate of the total number of each species expected to be taken over the duration of the survey. In this case, as the estimated number of each species taken per day varied depending on survey area (Lease Area and cable route corridor), the number of each species taken per day in each respective survey area was multiplied by the number of survey days anticipated in each survey area (*i.e.,* 123 survey days in the Lease Area portion of the survey and 19 survey days in the cable route corridor portion of the survey) to get a total number of takes per species in each respective survey area. Total take numbers for each respective survey area (Lease Area and cable route corridor) were then rounded. These numbers were then summed to get a total number of each species expected to be taken over the duration of all surveys (Table 7).

As described above, due to the very small estimated distances to Level A harassment thresholds (based on both SEL_{cum} and peak SPL; Table 4), and in consideration of the mitigation measures, the likelihood of the survey resulting in take in the form of Level A harassment is considered so low as to be discountable, therefore we do not authorize take of any marine mammals by Level A harassment. Authorized take numbers are shown in Tables 5, 6, and 7. Take numbers authorized (Tables 5, 6, and 7) are slightly different than those requested in the IHA application (Table 7 in the IHA application) due to slight differences in take calculation methods.

TABLE 5—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED IN CABLE ROUTE CORRIDOR PORTION OF SURVEY

Species	Density (#/1,000 km^2)	Level A takes	Level B takes	Total takes
North Atlantic right whale	0.04	0	3	3
Humpback whale	0.02	0	2	2
Fin whale	0.1	0	8	8
Sperm whale	0.01	0	1	1
Minke whale	0.03	0	2	2
Bottlenose dolphin	9.65	0	768	768
Short-beaked common dolphin	1.42	0	113	113
Atlantic white-sided dolphin	0.32	0	25	25
Harbor porpoise	1.91	0	152	152
Harbor seal	4.87	0	388	388
Gray seal	4.87	0	388	388

TABLE 6—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED IN LEASE AREA PORTION OF SURVEY

Species	Density (#/1,000 km^2)	Level A takes	Level B takes	Total takes
North Atlantic right whale	0.03	0	15	15
Humpback whale	0.04	0	21	21
Fin whale	0.17	0	88	88
Sperm whale	0.01	0	5	5
Minke whale	0.07	0	36	36
Bottlenose dolphin	1.53	0	788	788
Short-beaked common dolphin	3.06	0	1,577	1,577
Atlantic white-sided dolphin	0.78	0	402	402
Harbor porpoise	4.09	0	2,107	2,107
Harbor seal	4.87	0	2,509	2,509
Gray seal	4.87	0	2,509	2,509

TABLE 7—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED AND TAKES AS A PERCENTAGE OF POPULATION

Species	Level A takes	Level B takes	Total takes	Total takes as a percentage of population
North Atlantic right whale	0	18	18	4.1
Humpback whale	0	23	23	2.8
Fin whale	0	96	96	5.9
Sperm whale	0	6	6	0.3
Minke whale	0	38	38	1.5
Bottlenose dolphin	0	1,556	1,556	2.0
Short-beaked common dolphin	0	1,690	1,690	2.4
Atlantic white-sided dolphin	0	427	427	0.9
Harbor porpoise	0	2,259	2,259	2.8
Harbor seal	0	2,897	2,897	3.8
Gray seal	0	2,897	2,897	0.6

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider 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. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) and the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as relative cost and impact on operations.

Mitigation Measures

With NMFS' input during the application process, and as per the BOEM Lease, Statoil proposed the following mitigation measures during their site characterization surveys.

Marine Mammal Exclusion and Watch Zones

As required in the BOEM lease, marine mammal exclusion zones (EZ) will be established around the HRG survey equipment and monitored by protected species observers (PSO) during HRG surveys as follows:

- 50 m EZ for pinnipeds and delphinids (except harbor porpoises);
- 100 m EZ for large whales including sperm whales and mysticetes (except North Atlantic right whales) and harbor porpoises;
- 500 m EZ for North Atlantic right whales.

In addition, PSOs will visually monitor for all marine mammals to the extent of a 500 m ''Watch Zone'' or as far as possible if the extent of the Watch Zone is not fully visible.

Statoil intends to submit a sound source verification report showing sound levels associated with HRG survey equipment. If results of the sound source verification report indicate that actual distances to isopleths corresponding to harassment thresholds are larger than the EZs and/or Level B monitoring zones, NMFS may modify the zone(s) accordingly. If results of source verification indicate that actual distances to isopleths corresponding to harassment thresholds are less than the EZs and/or Level B monitoring zones, Statoil has indicated

an intention to request modification of the zone(s), as appropriate. NMFS would review any such request and may modify the zone(s) depending on review of the report on source verification. Any such modification may be superseded by EZs required by BOEM.

Visual Monitoring

As per the BOEM lease, visual and acoustic monitoring of the established exclusion and monitoring zones will be performed by qualified and NMFS-approved PSOs. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. PSOs will be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Digital single-lens reflex camera equipment will be used to record sightings and verify species identification. During surveys conducted at night, night-vision equipment and infrared technology will be available for PSO use, and PAM (described below) will be used.

Pre-Clearance of the Exclusion Zone

For all HRG survey activities, Statoil will implement a 30-minute pre-clearance period of the relevant EZs prior to the initiation of HRG survey equipment (as required by BOEM). During this period the EZs will be monitored by PSOs, using the appropriate visual technology for a 30-minute period. HRG survey equipment will not be initiated if marine mammals are observed within or approaching the relevant EZs during this pre-clearance period. If a marine mammal is observed within or approaching the relevant EZ during the pre-clearance period, ramp-up will not begin until the animal(s) has been observed exiting the EZ or until an additional time period has elapsed with no further sighting of the animal (15 minutes for small delphinoid cetaceans and pinnipeds and 30 minutes for all other species). This pre-clearance requirement will include small delphinoids that approach the vessel (*e.g.,* bow ride). PSOs will also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

Passive Acoustic Monitoring

As required in the BOEM lease, PAM will be required during HRG surveys conducted at night. In addition, PAM systems would be employed during daylight hours as needed to support system calibration and PSO and PAM team coordination, as well as in support of efforts to evaluate the effectiveness of the various mitigation techniques (*i.e.,* visual observations during day and night, compared to the PAM detections/operations). PAM operators will also be on call as necessary during daytime operations should visual observations become impaired. BOEM's lease stipulations require the use of PAM during nighttime operations. However, these requirements do not require that any mitigation action be taken upon acoustic detection of marine mammals. Given the range of species that could occur in the survey area, the PAM system will consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 75 Hz to 30 kHz). The PAM operator would monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). The PAM operator would communicate detections to the Lead PSO on duty who will ensure the implementation of the appropriate mitigation procedures. A mitigation and monitoring communications flow diagram has been included as Appendix C of the IHA application.

Ramp-Up of Survey Equipment

As required in the BOEM lease, where technically feasible, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. The ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment use at full energy. A ramp-up will begin with the power of the smallest acoustic equipment at its lowest practical power output appropriate for the survey. When technically feasible the power will then be gradually turned up and other acoustic sources added in a way such that the source level would increase gradually.

Shutdown Procedures

As required in the BOEM lease, if a marine mammal is observed within or approaching the relevant EZ (as described above) an immediate shutdown of the survey equipment is required. Subsequent restart of the survey equipment may only occur after the animal(s) has either been observed exiting the relevant EZ or until an additional time period has elapsed with no further sighting of the animal (*e.g.,*15 minutes for delphinoid cetaceans and pinnipeds and 30 minutes for all other species). HRG survey equipment may continue operating if small delphinids voluntarily approach the vessel (*e.g.,* to bow ride) when HRG survey equipment is operating.

As required in the BOEM lease, if the HRG equipment shuts down for reasons other than mitigation (*i.e.,* mechanical or electronic failure) resulting in the cessation of the survey equipment for a period greater than 20 minutes, a 30 minute pre-clearance period (as described above) will precede the restart of the HRG survey equipment. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its full operational level only if visual surveys were continued diligently throughout the silent period and the EZs remained clear of marine mammals during that entire period. If visual surveys were not continued diligently during the pause of 20 minutes or less, a 30-minute pre-clearance period (as described above) will precede the re-start of the HRG survey equipment. Following a shutdown, HRG survey equipment may be restarted following pre-clearance of the zones as described above.

Vessel Strike Avoidance

Statoil will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds by slowing down or stopping the vessel to avoid striking marine mammals. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammal sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures will include, but are not limited to, the following, as required in the BOEM lease, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators and crew will maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;

• All vessel operators will comply with 10 knot (18.5 km/hr) or less speed restrictions in any SMA per NOAA guidance. This applies to all vessels operating at any time of year;

• All vessel operators will reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;

• All survey vessels will maintain a separation distance of 500 m (1,640 ft) or greater from any sighted North Atlantic right whale;

• If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500 m (1,640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 100 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m;

• All vessels will maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean. Any vessel underway will remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway will reduce vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;

• All vessels underway will not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped; and

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey event.

Seasonal Operating Requirements

Between watch shifts, members of the monitoring team will consult NMFS' North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. However, the survey activities will occur outside of the SMA located off the coasts of New Jersey and New York. Members of the monitoring team will monitor the NMFS North Atlantic right whale reporting systems for the establishment of a Dynamic Management Area (DMA). If NMFS should establish a DMA in the survey area, within 24 hours of the establishment of the DMA Statoil will work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

The mitigation measures are designed to avoid the already low potential for injury in addition to some Level B harassment, and to minimize the potential for vessel strikes. There are no known marine mammal feeding areas, rookeries, or mating grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The survey will occur in an area that has been identified as a biologically important area for migration for North Atlantic right whales. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area, the survey is not expected to appreciably reduce migratory habitat nor to negatively impact the migration of North Atlantic right whales, thus mitigation to address the survey's occurrence in North Atlantic right whale migratory habitat is not warranted. Further, we believe the mitigation measures are practicable for the applicant to implement.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

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 survey 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); and

• Mitigation and monitoring effectiveness.

Monitoring Measures

As described above, visual monitoring of the EZs and monitoring zone will be performed by qualified and NMFS-approved PSOs. Observer qualifications

will include direct field experience on a marine mammal observation vessel and/or aerial surveys and completion of a PSO and/or PAM training program, as appropriate. As proposed by the applicant and required by BOEM, an observer team comprising a minimum of four NMFS-approved PSOs and a minimum of two certified PAM operator(s), operating in shifts, will be employed by Statoil during the surveys. PSOs and PAM operators will work in shifts such that no one monitor will work more than 4 consecutive hours without a 2 hour break or longer than 12 hours during any 24-hour period. During daylight hours the PSOs will rotate in shifts of one on and three off, while during nighttime operations PSOs will work in pairs. The PAM operators will also be on call as necessary during daytime operations should visual observations become impaired. Each PSO will monitor 360 degrees of the field of vision.

Also as described above, PSOs will be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Digital single-lens reflex camera equipment will be used to record sightings and verify species identification. During night operations, PAM, night-vision equipment, and infrared technology will be used to increase the ability to detect marine mammals. Position data will be recorded using hand-held or vessel global positioning system (GPS) units for each sighting. Observations will take place from the highest available vantage point on the survey vessel. General 360-degree scanning will occur during the monitoring periods, and target scanning by the PSO will occur when alerted of a marine mammal presence.

Data on all PAM/PSO observations will be recorded based on standard PSO collection requirements. This will include dates and locations of survey operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age classification [if known], numbers, behavior); and details of any observed ''taking'' (behavioral disturbances). The data sheet will be provided to NMFS for review and approval prior to the start of survey activities. In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals. A briefing will also be conducted between the survey supervisors and crews, the PSOs, and Statoil. The purpose of the briefing will be to establish responsibilities of each party, define the chains of command, discuss communication procedures, provide an overview of monitoring purposes, and review operational procedures.

Acoustic Field Verification— As described above, field verification of sound levels associated with survey equipment will be conducted. Results of the field verification may be used to request modification of the EZs and monitoring zones. The details of the applicant's plan for field verification of sound levels are provided as Appendix B to the IHA application.

Reporting Measures

Statoil will provide the following reports as necessary during survey activities:

- The Applicant will contact NMFS within 24 hours of the commencement of survey activities and again within 24 hours of the completion of the activity.
- *Notification of Injured or Dead Marine Mammals*—In the unanticipated event that the specified HRG and geotechnical activities lead to an injury of a marine mammal (Level A harassment) or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Statoil would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the NMFS Greater Atlantic Stranding Coordinator. The report would include the following information:
  - Time, date, and location (latitude/longitude) of the incident;
  - Name and type of vessel involved;
  - Vessel's speed during and leading up to the incident;
  - Description of the incident;
  - Status of all sound source use in the 24 hours preceding the incident;
  - Water depth;
  - Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
  - Description of all marine mammal observations in the 24 hours preceding the incident;
  - Species identification or description of the animal(s) involved;
  - Fate of the animal(s); and
  - Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the event. NMFS would work with Statoil to minimize reoccurrence of such an event in the future. Statoil would not resume activities until notified by NMFS.

In the event that Statoil discovers an injured or dead marine mammal and 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), Statoil would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the NMFS Greater Atlantic Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Statoil to determine if modifications in the activities are appropriate.

In the event that Statoil discovers an injured or dead marine mammal and 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), Statoil would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, and the NMFS Greater Atlantic Regional Stranding Coordinator, within 24 hours of the discovery. Statoil would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Statoil may continue its operations under such a case.

- Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals estimated to have been taken during survey activities, and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

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. 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, our analysis applies to all the species listed in Table 7, given that NMFS expects the anticipated effects of the planned survey to be similar in nature.

NMFS does not anticipate that serious injury or mortality would occur as a result of Statoil's survey, even in the absence of mitigation. Thus the authorization does not authorize any serious injury or mortality. As discussed in the *Potential Effects* section, non-auditory physical effects and vessel strike are not expected to occur.

We expect that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Potential impacts to marine mammal habitat were discussed previously in the **Federal Register** notice for the proposed IHA (83 FR 7655; February 22, 2018). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. In addition to being temporary and short in overall duration, the acoustic footprint of the planned survey is small relative to the overall distribution of the animals in the area and their use of the area. Feeding behavior is not likely to be significantly impacted, as no areas of biological significance for marine mammal feeding are known to exist in the survey area. Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal feeding habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no rookeries or mating or calving areas known to be biologically important to marine mammals within the survey area. The survey area is within a biologically important migratory area for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LaBrecque, *et al.,* 2015). Off the coast of New York, this biologically important migratory area extends from the coast to the shelf break. Due to the fact that that the planned survey is temporary and short in overall duration, and the fact that the spatial acoustic footprint of the planned survey is very small relative to the spatial extent of the available migratory habitat in the area, right whale migration is not expected to be impacted by the planned survey.

The mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy; (2) preventing animals from being exposed to sound levels that may otherwise result in injury. Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit to and within the survey area.

NMFS concludes that exposures to marine mammal species and stocks due to Statoil's survey will result in only short-term (temporary and short in duration) effects to individuals exposed. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality, serious injury, or Level A harassment is anticipated or authorized;
- The anticipated impacts of the activity on marine mammals would be temporary behavioral changes due to avoidance of the area around the survey vessel;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity;
- The project area does not contain areas of significance for feeding, mating or calving;
- Effects on species that serve as prey species for marine mammals from the survey are not expected;
- The mitigation measures, including visual and acoustic monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned 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, where estimated numbers are available, 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. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The numbers of marine mammals authorized to be taken, for all species and stocks, would be considered small relative to the relevant stocks or populations (less than 6 percent of each species and stock). See Table 7. Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative

to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is authorizing the incidental take of three species of marine mammals which are listed under the ESA: The North Atlantic right, fin, and sperm whale. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, and sperm whale. The Biological Opinion can be found online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*. Upon request from the NMFS Office of Protected Resources, NMFS GARFO has issued an amended incidental take statement associated with this Biological Opinion to include the takes of the ESA-listed marine mammal species authorized through this IHA.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from the project. A Finding of No Significant Impact (FONSI) was signed on April 25, 2018. A copy of the EA and FONSI is available on the internet at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*.

Authorization

NMFS has issued an IHA to Statoil for conducting marine site characterization surveys offshore of New York and along potential submarine cable routes for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 30, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–09367 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG199

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 public meeting of its Scallop Advisory Panel 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 23, 2018 at 9 a.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903 Phone: (401) 861–8000.

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 Scallop Advisory Panel will provide research recommendations for the 2018/2019 Scallop Research Set-Aside (RSA) federal funding announcement. They also plan to review progress on 2018 work priorities, focusing on (1) standard default measures; (2) monitoring and catch accounting. Progress on other work items may be discussed, as well as the initiation of appropriate vehicles (Specifications package, Framework, Amendment) to complete work items. The panel will also receive an update on Scallop Committee tasking re: Achieved at-sea monitoring coverage levels. Other business may be discussed as necessary.

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 these meetings. 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. 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: April 27, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–09343 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Region Vessel Identification Requirements.

OMB Control Number: 0648–0355.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 1,203.

Average Hours per Response: 15 minutes.

Burden Hours: 180.

Needs and Uses: This request is for extension of a currently approved information collection.

The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing (or other activity) to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. A vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances at sea and in the air. Law enforcement personnel rely on vessel marking information to assure compliance with fisheries management regulations. Vessels that qualify for particular fisheries are also readily identified, and this allows for more cost-effective enforcement. Cooperating fishermen also use the vessel numbers to report suspicious or non-compliant activities that they observe in unauthorized areas. The identifying number on fishing vessels is used by the National Marine Fisheries Service (NMFS), the United States Coast Guard (USCG), and other marine agencies in issuing regulations, prosecutions, and other enforcement actions necessary to support sustainable fisheries behaviors as intended in regulations. Regulation-compliant fishermen ultimately benefit from these requirements, as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

Affected Public: Business or other for-profit organization.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 30, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–09376 Filed 5–2–18; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice; correction.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled published a document in the **Federal Register** of March 30, 2018, concerning a notice of Proposed Additions and Deletions.

FOR FURTHER INFORMATION CONTACT: Amy B. Jensen, Telephone: (703) 603–2132.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 30, 2018, in FR Doc. 2018–06492, (83 FR 13739), the Committee would like to correct the notice heading from '' Initial Regulatory Flexibility Act Certification'' to ''Procurement List; Proposed Additions and Deletions''. In addition, the notice should have contained the following information:

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and service previously furnished by such agencies.

DATES: Comments must be received on or before: April 29, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Amy B. Jensen, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

Products

NSN(s)—Product Name(s):
5180–00–NIB–0025—Tool, Kit Refrigeration, Individual.
5180–00–NIB–0026—Tool Kit, Refrigeration, Base.
Mandatory for: 100% of the requirements of the U.S. Army.
Mandatory Source of Supply: Beyond Vision, Milwaukee, WI.
Contracting Activity: U.S. Army Contracting Command—Warren.
Distribution: C-List.

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
7930–01–619–1851—Cleaner, Wheel and Tire, 5 GL
7930–01–619–2632—Bug Remover, Concentrated, Gelling, Vehicle, 5 GL
Mandatory Source of Supply: VisionCorps, Lancaster, PA.
Contracting Activity: General Services Administration, Fort Worth, TX.

Service

Service Type: Grounds Maintenance Service.
Mandatory for: Naval & Marine Corps Reserve Center, Encino, CA.
Mandatory Source of Supply: Lincoln Training Center and Rehabilitation Workshop, South El Monte, CA.
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command.

Dated: March 26, 2018.

Amy Jensen,

Director, Business Operations.

[FR Doc. 2018–08322 Filed 5–2–18; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2018–0003; OMB Control Number 0704–0397]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 4, 2018.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Contract Modifications and related clause at DFARS 252.243–7002; OMB Control Number 0704–0397.

Affected Public: Businesses or other for-profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision of a currently approved collection.

Reporting Frequency: On occasion.

Number of Respondents: 88.

Responses per Respondent: 1.1, approximately.

Annual Responses: 94.

Average Burden per Response: 14.2 hours, approximately.

Annual Burden Hours: 1,334.

Needs and Uses: The clause at DFARS 252.243–7002, Requests for Equitable Adjustment, is prescribed at DFARS 243.205–71 for use in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that are estimated to exceed the simplified acquisition threshold. The clause requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The clause also requires contractors to fully disclose all facts relevant to the requests for adjustment. DoD contracting officers and auditors use this information to evaluate contractor requests for equitable adjustments to contracts.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: WHS/ESD Directives Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–09358 Filed 5–2–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2018–0034; OMB Control Number 0704–0231]

Submission for OMB Review; Comment Request

ACTION: 30-Day emergency information collection notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 4, 2018.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, associated DFARS Clauses at DFARS 252.237, DD Form 2062, Record of Preparation and Disposition of Remains (DoD Mortuary Facility), and DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS); OMB Control Number 0704–0231.

Type of Request: Emergency.

Number of Respondents: 2,737.

Responses per Respondent: 1.5, approximately.

Annual Responses: 4,019.

Average Burden per Response: 1.5, approximately.

Annual Burden Hours: 6,051.

Needs and Uses: This information collection is used for the following purposes—

DFARS 237.270 prescribes the use of the provision at DFARS 252.237–7000, Notice of Special Standards, in solicitations for the acquisition of audit services. The provision, at paragraph (c), requires the apparently successful offeror to submit evidence that it is properly licensed in the state or political jurisdiction it operates its professional practice.

DFARS 237.7003 prescribes the use of the clause 252.237–7011, Preparation History. The clause and the DD Form 2062, Record of Preparation and Disposition of Remains (DoD Mortuary Facility), and the DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS) are used to verify that the deceased's remains have been properly cared by the mortuary contractor.

DFARS 237.7603(b) prescribes the use of the provision at 252.237–7024, Notice of Continuation of Essential Contractor Services, in solicitations that require the acquisition of services to support a mission essential function. The provision requires the offeror to submit a written plan demonstrating its capability to continue to provide the contractually required services to support a DoD component's mission essential functions in an emergency. The written plan, submitted concurrently with the proposal or offer, allows the contracting officer to assess the offeror's capability to continue providing contractually required services to support the DoD component's mission essential functions in an emergency.

DFARS 237.7603(a) prescribes the use of the clause at DFARS 252.237–7023, Continuation of Essential Contractor Services, in solicitations and contracts for services in support of mission essential functions. The clause requires the contractor to maintain and update its written plan as necessary to ensure that it can continue to provide services to support the DoD component's mission essential functions in an emergency. The contracting officer provides approval of the updates to the contractor's plan, to ensure that the contractor can continue to provide services in support of the DoD component's required mission essential functions in an emergency.

Affected Public: Businesses and other for-profit and not-for profit institutions.

Reporting Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Information Collections Program, WHS/ESD Office of Information Management, 4800 Mark Center Drive, 3rd Floor, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–09360 Filed 5–2–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Bipartisan Budget Act of 2018—Emergency Assistance to Institutions of Higher Education Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting pre-applications and applications for the fiscal year (FY) 2018 Emergency Assistance to Institutions of Higher Education Program, Catalog of Federal Domestic Assistance (CFDA) number 84.938T. We will make the pre-applications available upon publication of this notice, and we will make the applications available after review of the pre-applications. We intend to make the applications available 60 days after publication of this notice.

DATES:

Applications Available: May 3, 2018.

Deadline for Transmittal of Pre-Applications: June 4, 2018.

Deadline for Transmittal of Applications: August 1, 2018.

ADDRESSES: The addresses pertinent to this program—including the addresses for obtaining and submitting an application or pre-application—can be found under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Beatriz Ceja, U.S. Department of Education, 400 Maryland Avenue SW, Room 260–04, Washington, DC 20202–6200. Telephone: (202) 453–6239. Email: *Beatriz.Ceja@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under the Emergency Assistance to Institutions of Higher Education Program (EAI Program or EAI), we will award grants to eligible institutions of higher education (IHEs) for emergency assistance in areas directly affected by a covered disaster or emergency: Hurricanes Harvey, Irma, and Maria, and the wildfires in calendar year 2017 for which the President declared a major disaster or emergency under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5191) (covered disaster or emergency). Under the Bipartisan Budget Act of 2018 (Budget Act) the funds available under the EAI Program are for programs authorized under subpart 3 of part A and part C of title IV and part B of title VII of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1087–51 *et seq.*; 20 U.S.C. 1138 *et seq.*), but the funds may be used for activities beyond those supported by those specific programs. In accordance with the Budget Act, we will award grants to eligible IHEs for emergency assistance for any purpose authorized under the HEA. We will prioritize, to the extent possible, projects that support students who are homeless or at risk of becoming homeless as a result of displacement, and IHEs that have sustained extensive damage, by a covered disaster or emergency.

Exemption From Rulemaking: This program is exempt from the rulemaking requirements in section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232) and section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Division B, Subdivision 1, Title VIII, ''Hurricane Education Recovery'' paragraph (6), of Public Law 115–123, the ''Bipartisan Budget Act of 2018.'' 132 Stat. 98.

Program Authority: Bipartisan Budget Act of 2018, Public Law 115–123.

Note: The Budget Act provides that funds provided through the EAI Program must be for certain programs established under the HEA (the Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and the Fund for the Improvement of Postsecondary Education programs), but use of the funds is not limited to the activities authorized under those programs. Funds provided through these grants may be used for student financial assistance, faculty and staff salaries, equipment, student supplies and instruments, or any purpose authorized under the HEA.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $100,000,000.

Estimated Maximum Award: $20,000,000.

Estimated Average Size of Awards: $650,000.

Estimated Number of Awards: 150.

Note: The Department is not bound by any estimates in this notice.

Project Period: Grantees must expend funds within 24 months of the award date.

III. Eligibility Information

1. *Eligible Applicants:* Institutions that (1) meet the definition of ''institution of higher education'' in

section 101 or section 102(a)(1) of the HEA (20 U.S.C. 1001 and 1002(a)(1)), and (2) are located in areas directly affected by a covered disaster or emergency.

Note: Receiving a grant for emergency assistance under the EAI Program does not affect the eligibility of the IHE to apply for funding under any other Department program.

2. a. *Cost Sharing or Matching:* Any requirements relating to matching, Federal share, reservation of funds, or maintenance of effort under the programs authorized under subpart 3 of part A and part C of title IV and part B of title VII of the HEA, as amended (20 U.S.C. 1087–51 *et seq.*; 20 U.S.C. 1138 *et seq.*) that would otherwise apply to EAI grants will not apply.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grantees may not use EAI funds to supplant funds that otherwise would have been used for the same purpose, including funds made available through an insurance policy, the Federal Emergency Management Agency, a State, or a nonprofit relief organization. Grantees may use EAI funds to supplement funds from such sources without exceeding the full amount needed to remedy the effects of the covered disaster or emergency. (See *Allocation Criteria.*)

IV. Application and Submission Information

1. *Address To Request Pre-Application or Application Package:* Beatriz Ceja, U.S. Department of Education, 400 Maryland Avenue SW, Room 260–04, Washington, DC 20202–6200. Telephone: (202) 453–6239. Email: *Beatriz.Ceja@ed.gov.*

To obtain a copy via the internet, use the following address: *www2.ed.gov/programs/eai/applicant.html.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the pre-application or the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application are in the application package for this program.

Pre-Application: IHEs intending to submit an application for funds under this program must first complete and submit a pre-application data information form from which institutional allotments will be calculated. The data form can be downloaded from *www.ed.gov/hurricane-help.* Complete the form and send it to *EAIProgram@ed.gov* by the date established under *Deadline for Transmittal of Pre-Applications.* Within 30 days after the Pre-Application deadline, if the IHE is eligible for funding, the Department will either: (1) Calculate the applicant IHE's allotment and email notice of the amount back to the contact person identified by the IHE on the pre-application form, and the eligible IHEs will then have until August 1, 2018 to submit their application and budget information to the Department through *Grants.gov*; or (2) request additional information from the eligible IHE in order to calculate the applicant IHE's allotment.

Note: We may consider late pre-applications or applications after on-time submissions are evaluated. We may reserve funds to accommodate additional requests because all of the costs of remedying the effects of the covered disasters or emergencies may not yet be known. No funds will be available after September 30, 2022.

Pre-applications and applications for grants under this program may be submitted in one of two ways:

a. Email an electronic version of your pre-application or application in PDF (Portable Document Format) to *EAIProgram@ed.gov,* or

b. Mail the original and two copies of your pre-application or application by express mail service through the U.S. Postal Service or through a commercial carrier to Beatriz Ceja, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Room 260–04, Washington, DC 20202–6200.

The amount of time it can take to email a document will vary depending on a variety of factors, including the size of the document and the speed of your internet connection. Therefore, we strongly recommend that you do not wait until minutes before the deadline to begin emailing your pre-application or application.

For information on requirements when submitting paper pre-applications or applications, please see the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

3. *Accommodations:* Individuals with disabilities who need an accommodation or auxiliary aid in connection with the pre-application or application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT.** If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the pre-application or application process, the individual's pre-application or application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards in the applicable timeframe.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section above.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number, and you must maintain an active System for Award Management (SAM) registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period. For information on these requirements, please see Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

You may access the electronic grant application for the Emergency Assistance to Institutions of Higher Education Program at *www.ed.gov/hurricane-help.*

Note: Pre-applications and applications must be emailed or mailed as described above. Neither pre-applications nor applications will be accepted through *www.grants.gov.*

V. Application Review Information

1. *Allocation Criteria:* The Secretary establishes the following factors as criteria that will be used in allocating these funds:

(a) *Expenses.* The expenses incurred by the IHE to remedy the effects of the covered disaster or emergency, including the costs of construction and reconstruction associated with physical damage to the IHE caused by the covered disaster or emergency; and

(b) *Funds received.* Any amount of any insurance settlement or other funds received by the IHE, from any source including a Federal or other relief

agency, related to remedying the effects of the covered disaster or emergency.

Additional factors we will consider in making an award are from 34 CFR 75.209(a) and 34 CFR 75.210(a) and include the following.

(c) *Priorities.* We will prioritize, to the extent possible, projects that support institutions serving students who are homeless or at risk of becoming homeless as a result of displacement, and institutions that have sustained extensive damage, as a result of a covered disaster or emergency.

Note: Such expenses may include work to identify such students, outreach to such students, food, employment, housing, counseling, emergency grants, transportation, and other services, so long as all such expenses are authorized under the Higher Education Act. Applicants should only include those expenses directed to students who are homeless or at risk of becoming homeless, and applicants should not include expenses directed to a larger population of students, even if those expenses have aided some students who were homeless or at risk of becoming homeless. Applicants should, however, include expenses directed toward individual students who are homeless or at risk of becoming homeless, even if similar aid or services have been made available to other students.

(d) *Need for Project.* The Secretary will consider the need for the proposed project. In determining the need for the proposed project, the Secretary will consider the magnitude or severity of the problem to be addressed by the proposed project.

Note: To consider the magnitude or severity of the problem to be addressed, the Secretary will consider the estimated percentage of operations, as a proportion of the IHE's operations prior to the occurrence of the covered disaster or emergency, that remain impaired as a result of the covered disaster or emergency. This percentage should be estimated on the basis of year-over-year spending or budget, using spring 2017 as the baseline. For example, if the IHE's spring 2017 spending was $100 million and the IHE's spring 2018 budget is $75 million, the applicant should report that the IHE is operating at 75 percent.

An IHE must include information responsive to all four of these criteria in its pre-application.

Note: If, after we review the pre-applications, we determine additional selection criteria are appropriate, we will include those criteria, in addition to the criteria specified in this notice, in the application package.

2. *Review and Selection Process:* The Secretary will determine the amount of the individual grants to ensure a fair distribution of funds in accordance with statutory requirements.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

The Secretary may solicit, from any applicant at any time, additional information needed to process an application.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

5. *Improper Payments—Additional Reporting:* The ''Bipartisan Budget Act of 2018'' designates this program to be ''susceptible to significant improper payments'' for purposes of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note). See Public Law 115–123, the ''Bipartisan Budget Act of 2018,'' Division B, Subdivision 1, Title XII, § 21208(a), Feb. 9, 2018; 132 Stat. 108. Grantees will be required to undertake significant additional reporting as we implement plans to identify and reduce improper payments. We will provide additional information after we make awards.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

4. *Reporting:* (a) If you apply for a grant, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding. This does not

apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the pre-application and the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access to the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You also may access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 30, 2018.

Frank T. Brogan,

Principal Deputy Assistant Secretary and Delegated the Duties of the Assistant Secretary, Office of Planning, Evaluation and Policy Development, Delegated the Duties of the Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2018–09417 Filed 5–2–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Bipartisan Budget Act of 2018—Defraying Costs of Enrolling Displaced Students Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for the fiscal year (FY) 2018 Defraying Costs of Enrolling Displaced Students Program, Catalog of Federal Domestic Assistance (CFDA) number 84.938S.

DATES:

Applications Available: May 3, 2018.

Deadline for Transmittal of Applications: June 4, 2018.

ADDRESSES: The addresses pertinent to this program—including the addresses for obtaining and submitting an application—can be found under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: James Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–02, Washington, DC 20202–6200. Telephone: (202) 453–7814. Email: *James.Davis@ed.gov*.

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under the Defraying Costs of Enrolling Displaced Students Program (DCEDS Program or DCEDS), we will award grants to eligible institutions of higher education (IHEs) to help defray their unexpected expenses associated with enrolling displaced students from IHEs at which operations have been disrupted by a covered disaster or emergency (''qualifying displaced students''), namely Hurricanes Harvey, Irma, and Maria and the wildfires in calendar year 2017 for which the President declared a major disaster or emergency under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5191) (''covered disaster or emergency'').

Exemption From Rulemaking: This program is exempt from the rulemaking requirements in section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232) and section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Division B, Subdivision 1, Title VIII, ''Hurricane Education Recovery'' paragraph (6), of Public Law 115–123, the ''Bipartisan Budget Act of 2018.'' 132 Stat. 98.

Program Authority: Bipartisan Budget Act of 2018, Public Law 115–123.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98 and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply for this program.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $75,000,000.

Estimated Maximum Award: $2,000,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 250.

Note: The Department is not bound by any estimates in this notice.

Project Period: The Department expects to allocate most of the available funds during FY 2018. We may reserve funds to help defray costs that extend into future fiscal years.

III. Eligibility Information

1. *Eligible Applicants:* Institutions that meet the definition of ''institution of higher education'' in section 101 or section 102(a)(1) of the Higher Education Act of 1965, as amended (20 U.S.C. 1001 and 1002(a)(1)) if they have had unexpected expenses associated with enrolling displaced students from IHEs at which operations have been disrupted by a covered disaster or emergency.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grantees may not use DCEDS funds to supplant funds that have been or otherwise would have been used for the same purpose, including funds made available through the Federal

Emergency Management Agency, a State, or a nonprofit relief organization, with the exception of unreimbursed funds that the grantee has already spent on unexpected expenses associated with enrolling displaced students from affected IHEs. Grantees may use DCEDS funds to supplement funds from other sources up to the full amount needed to fully pay the unexpected expenses.

IV. Application and Submission Information

1. *Address To Request Application Package:* James Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–02, Washington, DC 20202–6200. Telephone: (202) 453–7814. Email: *James.Davis@ed.gov*.

To obtain a copy via the internet, use the following address: *http://www2.ed.gov/programs/dceds/applicant.html*.

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Application contents shall include:

a. A description of the applicant's activities, and unexpected expenses associated with enrolling displaced students from IHEs at which operations have been disrupted by a covered disaster or emergency, for which the applicant requests funding under this program.

b. A list of the displaced students, by anonymous unique identifier, for whom the applicant engaged in the enrollment activities labeled (a) through (c) below under Selection Criteria (tuition, fees, room, and board) and now requests funding under this program, as a result of each covered disaster or emergency, including, for each student, (1) the institution from which the student was displaced, and (2) the covered disaster or emergency that resulted in the student being displaced.

c. A description of the steps the applicant is taking to ensure accountability for the use of program funds and compliance with statutory requirements.

d. The total amount of aid requested for the allowable enrollment activities labeled (a) through (c) below under Selection Criteria (tuition, fees, room, and board).

Note: We may consider late applications after on-time applications are evaluated.

Applications for grants under this competition may be submitted in one of two ways:

a. Email an electronic version of your application in PDF (Portable Document Format) to *DCEDSProgram@ed.gov,* or

b. Mail the original and two copies of your application by express mail service through the U.S. Postal Service or through a commercial carrier to James Davis, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–02, Washington, DC 20202–6200.

The amount of time it can take to email an application will vary depending on a variety of factors, including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you do not wait until minutes before the application deadline to begin emailing your application.

For information on requirements when submitting paper applications, please see Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf*.

3. *Accommodations:* Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards in the applicable timeframe.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section above.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number, and you must maintain an active System for Award Management (SAM) registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period. For information on these requirements, please see Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf*.

You may access the electronic grant application for the DCEDS Program at *https://www.ed.gov/hurricane-help*.

Note: Applications must be emailed or mailed as described above. Applications will not be accepted through *www.grants.gov*.

V. Application Review Information

1. *Selection Criteria:* The Secretary establishes the following factors as criteria to be used in allocating these funds:

(a) Total amount of tuition waived, not including any portion covered by Federal, State, or private aid, for qualifying displaced students;

(b) Total amount of fees waived, not including any portion covered by Federal, State, or private aid, for qualifying displaced students;

(c) Total amount of room and board costs incurred by the applicant, not including any portion covered by Federal, State, or private aid, in order to enroll qualifying displaced students;

(d) Funds already received by the applicant to help defray the unexpected costs of enrolling qualifying displaced students. (To the extent that Federal, State, and private aid has already been subtracted from parts (a) through (c), do not count such amounts again in part (d) as funds already received. Please see the supplement-not-supplant information listed under *Supplement-Not-Supplant*.)

Note: In this competition, only the costs of tuition, fees, room, and board are allowable. If, after awards are made, funds remain available to defray additional costs under this program, we may invite applications under a new competition.

2. *Review and Selection Process:* Most funds will be awarded to IHEs that have enrolled displaced students during the 2017–2018 academic year.

The Secretary may solicit, from any applicant at any time, additional information needed to process an application.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the

applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

5. *Improper Payments—Additional Reporting:* The Bipartisan Budget Act of 2018 designates this program to be ''susceptible to significant improper payments'' for purposes of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note). See Public Law 115–123, the ''Bipartisan Budget Act of 2018,'' Division B, Subdivision 1, Title XII, § 21208(a), Feb. 9, 2018; 132 Stat. 108. Grantees will be required to undertake significant additional reporting as we implement plans to identify and reduce improper payments. We will provide additional information after we make awards.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You also may access documents of the Department published in the **Federal Register**by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 30, 2018.

Frank T. Brogan,

Principal Deputy Assistant Secretary and Delegated the Duties of the Assistant Secretary, Office of Policy, Evaluation and Policy Development, Delegated the duties of Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2018–09418 Filed 5–2–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 23, 2018 1:00 p.m.–5:15 p.m.

ADDRESSES: Ohkay Conference Center, Highway 68, 1 Mile North of Española, Ohkay Owingeh, New Mexico 87566.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@em.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order

- Welcome and Introductions
- Approval of Agenda and Meeting Minutes of March 14, 2018
- Old Business
  - Report on EM SSAB Chairs Meeting
  - Other Items
- New Business
- Wildfire Mitigation In and Around Los Alamos National Laboratory
- Break
- Update on EM Contract Transition
- Consideration and Action on Draft Recommendation 2018–02, Energy Communities Alliance's Waste Disposition Report
- Public Comment Period
- Update from EM Los Alamos Field Office
- Update from New Mexico Environment Department
- Update from NNMCAB Deputy Designated Federal Officer and Executive Director
- Wrap-Up Comments from NNMCAB Members
- Adjourn

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the internet at: *https://energy.gov/em/nnmcab/meeting-materials*.

Issued at Washington, DC, on April 30, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–09388 Filed 5–2–18; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0500; FRL–9977–47–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA's ENERGY STAR Program in the Residential Sector

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR)—EPA's ENERGY STAR Program in the Residential Sector, EPA ICR Number 2193.04, OMB Control Number 2060–0586—to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Public comments were previously requested via the **Federal Register** on January 5, 2018 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 4, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2004–0500, to (1) EPA online using *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.

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: Brian Ng, Energy Star Residential Branch, Mailcode 6202A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9162; fax number: (202) 343–2204; email address: *ng.brian@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, which can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Docket Center telephone number is 202–566–1744. For additional information, visit *http://www.epa.gov/dockets*.

Abstract: ENERGY STAR® is a voluntary energy efficiency labeling and public outreach program aimed at forming public-private partnerships that prevent air pollution rather than control it after its creation. ENERGY STAR's new construction programs promote cost-effective, whole house energy efficiency that is independently verified by third party professionals. ENERGY STAR also promotes cost-effective energy efficiency improvements in existing homes through its ENERGY STAR Verified HVAC Installation program. Participation in the ENERGY STAR program is voluntary and included the following activities:

Joining the ENERGY STAR Program and Related Activities: An organization interested in joining ENERGY STAR as a partner is asked to complete and submit a partnership agreement. Partners agree to undertake efforts such as educating their staff and the public about the partnership, developing and implementing a plan to improve energy performance in homes, and highlighting achievements utilizing the ENERGY STAR label.

Verification of ENERGY STAR Guidelines: The verification process for site-built homes involves the home builder, the third-party verification organization (Home Energy Rating Providers and Home Energy Raters) and the HVAC contractor, which complete four checklists as part of the verification process. The verification process for multifamily high-rise units involves the developer submitting information both pre-construction and post-construction to a third-party Multifamily High Rise Review Organization to ensure that program prerequisites and energy conservation measures are properly installed and meet ENERGY STAR requirements. In addition, plants producing manufactured homes undergo a certification process to ensure that they can consistently produce and install homes that meet ENERGY STAR guidelines. Also, under ENERGY STAR's Verified HVAC Installation program, local program sponsors promote the installation of HVAC systems in homes to meet ENERGY

STAR guidelines. Sponsors oversee contractors who perform the installations, perform tests, and report the results to the sponsors. Sponsors submit periodic reports to EPA on these activities.

Evaluation: Partners and other participants are asked to periodically submit information as needed to assist in evaluating the effectiveness of ENERGY STAR's energy efficiency guidelines, to provide information about energy efficiency incentives available to the public, and to determine the impact that ENERGY STAR has on the market for energy-efficient homes.

Periodic Reporting: Some partners are asked to periodically submit information to EPA to assist EPA in tracking and measuring progress in building and promoting ENERGY STAR certified homes and installing and promoting energy-efficient improvements.

ENERGY STAR Awards: Each year, partners who meet specific criteria are eligible to apply for an ENERGY STAR award, which recognizes organizations demonstrating outstanding support in promoting ENERGY STAR.

Form Numbers: 5900–188, 5900–266, 5900–268, 5900–269, 5900–270, 5900–420, 5900–421, 5900–422, 5900–423, 5900–424, 5900–425, 5900–426, 5900–427, 5900–428, 5900–429.

Respondents/affected entities: ENERGY STAR partners, including home builders, multifamily high rise developers, manufactured home plants, verification organizations, and energy efficiency program sponsors. Also included are oversight organizations and HVAC contractors.

Respondent's obligation to respond: Voluntary

Estimated number of respondents: 3,235 (total).

Frequency of response: Once, quarterly, annually, and on occasion.

Total estimated burden: 177,847 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $14,747,008 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 6,120 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This includes a 68,457-hour decrease due primarily to program changes and a 62,337-hour increase due to adjustments resulting primarily from improved data and analysis. EPA's program changes include the sun-setting of several programs and collections, including the Lender Partnership program, the Designed to Earn program, and the Outreach Partnership. In addition, the Home Performance with ENERGY STAR program was transferred from EPA to the U.S. Department of Energy. EPA also will no longer collect homeowner information related to ENERGY STAR certified homes or other programmatic information under this ICR. EPA's adjustments include updating the number of respondents and burdens based on improved data and analysis.

Courtney Kerwin,

Director, Collection Strategies Division.

[FR Doc. 2018–09332 Filed 5–2–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9977–54–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; Equistar Corpus Christi, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Equistar for two Class I hazardous waste injection wells located at their Corpus Christi, Texas facility. The company has adequately demonstrated to the satisfaction of the EPA by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Equistar of the specific restricted hazardous wastes identified in this exemption reissuance, into Class I hazardous waste injection wells WDW–152 and WDW–153 until December 31, 2045, unless the EPA moves to terminate this exemption or other petition condition limitations are reached. Additional conditions included in this final decision may be reviewed by contacting the EPA Region 6 Ground Water/UIC Section. A public notice was issued February 26, 2018, and the public comment period closed on April 13, 2018, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is effective as of April 20, 2018.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: April 20, 2018.

James R. Brown,

Associate Director, Safe Drinking Water Branch.

[FR Doc. 2018–09410 Filed 5–2–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft of a Proposed Statement of Federal Financial Accounting Standards (SFFAS), Accounting and Reporting of Government Land

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft of a proposed Statement of Federal Financial Accounting Standards (SFFAS) entitled *Accounting and Reporting of Government Land.*

The exposure draft is available on the FASAB website at *http://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by July 30, 2018, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW, Suite 1155,

Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: April 30, 2018.

Wendy M. Payne,

Executive Director.

[FR Doc. 2018–09391 Filed 5–2–18; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, May 8, 2018 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2018–09541 Filed 5–1–18; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS18–07]

Final Order Denying Temporary Waiver Relief

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Final Order denying temporary waiver relief.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) is issuing a final order denying temporary waiver relief pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended. This order denies a request for temporary waiver relief received from TriStar Bank, notice of which was published in the **Federal Register** on March 9, 2018.

DATES: Applicable May 3, 2018.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, ASC, 1401 H Street NW, Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant statutory provisions and regulations

Title XI established the ASC.[1] The purpose of Title XI is ''to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.'' [2] Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis and with approval of the FFIEC, ''any requirement relating to certification or licensing of a person to perform appraisals under [Title XI] upon a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with federally related transactions [3] in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals.'' [4] Congress intended that the ASC exercise this waiver authority ''cautiously.'' [5]

The ASC has issued procedures [6] governing the processing of temporary waiver requests. After receiving a waiver request, the ASC is required to issue a public notice in the **Federal Register** requesting comment on the request for a proposed temporary waiver. Within 15 days of the close of the 30-day comment period, the ASC, by order, must grant or deny a waiver, in whole or in part, and upon specified terms or conditions, including provisions for waiver termination. The ASC's order must respond to comments received, provide reasons for its finding, and be published promptly in the **Federal Register**.

B. Procedural Status

On November 20, 2017, the ASC received a letter requesting consideration of a temporary waiver from TriStar Bank, a state-chartered bank located in Dickson, Tennessee (Requester). On November 30, 2017, ASC staff replied by letter to the Requester, in which ASC staff described the information required to file a completed waiver request pursuant to 12 CFR §§ 1102.2 and 1102.3. On January 22, 2018, the Requester submitted additional information (dated January 10, 2018) in response to the ASC's November 30, 2017 letter. On March 9, 2018, the ASC published a Notice of Received Request for a Temporary Waiver giving interested persons 30 days to submit comments, including submission of written data, views and arguments.[7] On April 3, 2018, the Requester submitted correspondence with additional information in response to a comment letter submitted by the Tennessee Real Estate Appraiser Commission (discussed *infra*). The comment period closed on April 9, 2018. A discussion of the public comments received by the ASC concerning the request for temporary waiver relief follows in Section III below.

The ASC called a special meeting to consider this matter on April 23, 2018, and voted to approve the issuance of this final order denying temporary waiver relief.

II. Request for a Temporary Waiver

The request submitted by the Requester sought temporary waiver relief ''to receive a one-year waiver of the appraisal regulation's requirements to utilize a certified appraiser. . . . for appraisals completed within the Nashville MSA. . . . mostly in Dickson, Maury, Williamson and Davidson

[1] The ASC Board is comprised of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System [Board], Bureau of Consumer Financial Protection [Bureau], Federal Deposit Insurance Corporation [FDIC], Office of the Comptroller of the Currency [OCC], and National Credit Union Administration [NCUA]). The other two members are designated by the heads of the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA).

[2] Title XI § 1101, 12 U.S.C. 3331.

[3] ''Federally related transaction'' (FRT) refers to any real estate related financial transaction which: (a) A federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (Title XI § 1121 (4), 12 U.S.C. 3350.)

[4] 12 U.S.C. 3348(b).

[5] House Comm. on Banking, Finance and Urban Affairs, Report Together with Additional, Supplemental, Minority, Individual, and Dissenting Views, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, H.R. Rep. No. 101–54 Part 1, 101st Cong., 1st Sess., at 482–83.

[6] 12 CFR part 1102, subpart A.

[7] 83 FR 10480 (March 9, 2018).

counties.'' [8] The Requester stated that the shortage of appraisers, time delay and added cost is negatively impacting clients.

The Requester submitted data to support the request alleging a scarcity of certified general appraisers and delays experienced in receiving commercial appraisals/evaluations. The Requester stated, ''[w]e reviewed our appraisal logs in 2013 and in 2017 to determine the trend of pricing and timeliness of appraisals/evaluations during each year. Since 2013, the logs reflect an average increase of 82% in wait time to receive commercial appraisals/evaluations. During that time, the average cost to our clients for commercial appraisals/evaluations has increased 23%. The cost of time and money is putting pressure on our clients' ability to find value in our work.'' [9] The Requester further stated concern that ''the new requirements to become a certified general appraiser are not producing enough qualified appraisers in the market. A current appraiser has little motivation to train someone that he or she will have to compete against in the future or the time to commit to train an apprentice during this time of tremendous growth.'' [10]

The Requester stated there is only one certified general appraiser in the county of Dickson, and the demand is so great in the Nashville MSA area that the Requester is having a difficult time receiving appraisals in a reasonable amount of time. The Requester expressed concern that ''current regulation and requirements are not allowing a healthy marketplace to obtain independent values.'' [11]

III. Summary of Comments

The ASC received 166 comment letters in response to the published notice of received request for a temporary waiver and request for comment. These comment letters were received from State appraiser certifying and licensing agencies, appraiser and real estate trade associations, professional associations, AMCs, appraisal firms and appraisers. The majority of comments received were from appraisers opposing the granting of a temporary waiver. Several comments were also received from appraisal trade organizations opposing the granting of a temporary waiver.[12] Several appraisers credentialed in Tennessee responded to the ASC's request for comments by stating they have contacted TriStar offering to perform appraisals for the bank, but have not been assigned any appraisals or evaluations to date. A few commenters did not oppose or support the granting of a temporary waiver in response to this request, but requested the ASC exercise such waiver authority with caution. A few commenters supported the request for a waiver, but expressed support of a waiver of the requirement for an appraisal, which is beyond the scope of authority set forth in the statute authorizing the ASC to waive, on a temporary basis and with approval of the FFIEC, credentialing requirements.

One commenter who had provided appraisal and evaluation services for the Requester since 2012 provided data that in some cases contradicted data provided by the Requester. For example, the commenter claimed to have completed a number of commercial appraisals that were not included in the data submitted by the Requester. In addition, the commenter provided an explanation for lengthy turn-around times on two of the commercial properties listed in the Requester's data.

The Tennessee Real Estate Appraiser Commission (TN REAC) provided comment on this request, stating that it ''disagrees that there is a shortage of appraisers in those cited counties.'' [13] TN REAC also provided data showing that 174 Certified General appraisers and 491 total credentialed appraisers are available in the four counties and the directly surrounding area. This information is supported by the National Registry.[14]

IV. ASC Discussion

In order to grant a temporary waiver, the ASC must make a determination that a scarcity of credentialed appraisers is leading to significant delays in obtaining appraisals for FRTs in the geographic area [15] specified in the request. In considering this request, the ASC examined both evidence of a scarcity of appraisers in the area, and evidence of significant delay, taking into account the comments received.

Regarding the scarcity of appraisers, the Requester's comments focused on Dickson County. The Requester provided little discussion of scarcity in Maury, Davidson, and Williamson counties and no discussion of other counties in the Nashville MSA. As noted, TN REAC disagreed that a scarcity exists, and submitted more comprehensive information concerning the number of appraisers in this area.

Regarding the delay in obtaining appraisals, the Requester submitted data to show that the delivery time for the appraisals and evaluations it has ordered and received increased between 2013 and 2017. Because the request for a temporary waiver applies only to appraisals, the ASC focused on data related to delivery time for appraisals. Delivery times for appraisals alone have increased by a smaller percentage than the aggregated delivery times. In addition, the ASC believes it is useful to look at the median appraisal delivery times, especially in light of the small sample size presented by the Requester. Using the median time also results in an analysis that is more resistant to the influence of outliers in the data. The data provided by the Requester indicates that the delivery time for a commercial appraisal it ordered in the subject counties in 2013 was 21 days. In 2017, the delivery time was 27 days. Comparing the median numbers yields a six-day increase in the appraisal time between 2013 and 2017, based on the data provided by TriStar. But it appears the Requester's data may be incomplete. One commenter asserted that he completed additional commercial appraisals for the Requester in 2017 that were not reported. If these appraisals are considered in calculating the median, the delivery time for the Requester's commercial appraisals in 2017 was 24 days. This an increase of only three days.

In order to grant a temporary waiver request, the ASC must find both that there is a scarcity of appraisers in the relevant geographic area and that this scarcity has caused significant delays in appraisal services for FRTs. In this case, the information submitted to the ASC does not support a finding that there is a scarcity of appraisers that has resulted in a significant delay in the delivery times for appraisals. Thus, this request is denied.

VI. Order

For the reasons stated above, and pursuant to section 1119(b) of Title XI and 12 CFR part 1102, subpart A, the

[8] Letter from Requester to the ASC requesting a temporary waiver (Nov. 20, 2017).

[9] *Id.*

[10] *Id.*

[11] Letter from Requester to the ASC providing additional information on the request for a temporary waiver (Jan. 10, 2018).

[12] A number of commenters indicated that granting the waiver would erode the public trust, and a number of other commenters cautioned that granting of the waiver would result in the same conditions that led to the financial crisis in 2008.

[13] Letter from TN REAC to the ASC responding to request for comments on the temporary waiver request. (Jan. 23, 2018).

[14] Title XI requires the ASC to maintain a National Registry of State certified and licensed appraisers who are eligible to perform appraisals in FRTs. (Title XI § 1109(b)1), 12 U.S.C. 3338(b)(1).)

[15] The ASC's section 1119(b) temporary waiver authority is with respect to a State or any geographical political subdivision of a State.

ASC denies the request for temporary waiver relief from the State certification requirements for certified general appraisers to perform commercial appraisals for FRTs in the Tennessee counties of Dickson, Maury, Williamson and Davidson.

* * * * *

By the Appraisal Subcommittee.
Dated April 27, 2018.

Arthur Lindo,

Chairman.

[FR Doc. 2018–09419 Filed 5–2–18; 8:45 am]

BILLING CODE 6700–01–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 website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201248.

Title: COSCO SHIPPING/PIL/WHL/CMA CGM Vessel Sharing and Slot Exchange Agreement.

Parties: CMA CGM S.A.; COSCO Shipping Co., Ltd.; Pacific International Lines (PTE) Ltd.; Wan Hai Lines (Singapore) Pte. Ltd.; and Wan Hai Lines Ltd.

Filing Party: Eric Jeffrey; Nixon Peabody LLP; 799 9th Street NW, Suite 500; Washington, DC 20001.

Synopsis: The Agreement authorizes the Parties to operate a joint service and to exchange slots between that joint service and a service operated by CMA CGM in the trade between ports in China (including Hong Kong) and ports on the United States West Coast.

Agreement No.: 201249.

Title: Port of Los Angeles Data Delivery Agreement.

Parties: City of Los Angeles; APM Terminals Pacific Ltd.; Eagle Marine Services, Ltd.; Everport Terminal Services Inc.; TraPac Inc., West Basin Container Terminal LLC; and Yusen Terminals LLC.

Filing Party: David Smith & Jeff Vogel; Cozen O'Connor; 1200 19th Street NW, Washington, DC 20036.

Synopsis: The Agreement authorizes the parties to collect and deliver data with respect to trucks moving through Port of Los Angeles terminals to ensure compliance with the Port's Clean Truck Program. The Agreement also governs the maintenance of, and access to, the Drayage Truck registry, which contains information on whether trucks meet the Port's criteria for terminal access under its Clean Truck Program.

Dated: April 30, 2018.

Rachel E. Dickon,

Secretary.

[FR Doc. 2018–09365 Filed 5–2–18; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 2018.

A. *Federal Reserve Bank of St. Louis* (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *BancStar, Inc., and Pacific BancStar, Inc., both of St. Louis, Missouri;* to merge with Hillsboro Bancshares, Inc., Hillsboro, Missouri, and thereby indirectly acquire Bank of Hillsboro, Hillsboro, Missouri.

Board of Governors of the Federal Reserve System, April 26, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–09364 Filed 5–2–18; 8:45 am]

BILLING CODE

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of modified systems of records.

SUMMARY: The FTC proposes to modify all FTC Privacy Act system of records notices (SORNs) by amending and bifurcating an existing routine use relating to assistance in data breach responses, to conform with Office of Management and Budget (OMB) guidance to federal agencies, OMB Memorandum 17–12.

DATES: Comments must be submitted by June 4, 2018. This routine use, which is being published in proposed form, shall become final and effective July 2, 2018, without further notice unless otherwise amended or repealed by the Commission on the basis of any comments received.

ADDRESSES: Interested parties are invited to submit written comments by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Comments should refer to ''Privacy Act of 1974; System of Records: FTC File No. P072104'' to facilitate the organization of comments. Please file your comment online at *https://ftcpublic.commentworks.com/ftc/privacyactroutineuse* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold and Alex Tang, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2424.

SUPPLEMENTARY INFORMATION:

Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 4, 2018. Write ''Privacy Act of 1974; System of Records: FTC File No. P072104'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments*.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/privacyactroutineuse* by following the instructions on the web-based form. If this Notice appears at *www.regulations.gov,* you also may file a comment through that website.

If you file your comment on paper, write ''Privacy Act of 1974; System of Records: FTC File No. P072104'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request. Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c).

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 4, 2018. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *www.ftc.gov/privacy*.

Analysis to Aid Public Comment

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that the FTC is proposing to modify and bifurcate an existing routine use relating to assistance in data breach responses, which is applicable to all FTC SORNs, to conform with OMB Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information* (January 3, 2017). A list of the agency's current Privacy Act records systems is set out below and can be viewed on the FTC's website at: *www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems*. The modified and bifurcated routine use would be included in Appendix I, Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records, which describes routine uses that apply globally to all FTC Privacy Act records systems. Appendix I was previously published at 73 FR 33592 (June 12, 2008), the text of which is available on the FTC's website at the above hyperlink and would be updated accordingly.

System number and name	**Federal Register** citations [1]
FTC–I–1—Nonpublic Investigational and Other Nonpublic Legal Program Records	76 FR 60125 75 FR 52749–52751 74 FR 17863–17866 *73 FR 33591–33634
FTC–I–2—Disciplinary Action Investigatory Files	*73 FR 33591–33634
FTC–I–3—Informal Advisory Opinion Request and Response Files	*73 FR 33591–33634
FTC–I–4—Clearance Application and Response Files	*73 FR 33591–33634
FTC–I–5—Matter Management System	*82 FR 50872–50882
FTC–I–6—Public Records	*73 FR 33591–33634
FTC–I–7—Office of Inspector General Investigative Files	*82 FR 50872–50882
FTC–I–8—Stenographic Reporting Services Request System	80 FR 9460–9465 *73 FR 33591–33634
FTC–II–1—General Personnel Records	80 FR 9460–9465 74 FR 17863–17866 *73 FR 33591–33634
FTC–II–2—Unofficial Personnel Records	80 FR 9460–9465 74 FR 17863–17866 *73 FR 33591–33634
FTC–II–3—Worker's Compensation	*82 FR 50872–50882

System number and name	**Federal Register** citations [1]
FTC–II–4—Employment Application-Related Records	* 80 FR 9460–9465 73 FR 33591–33634
FTC–II–5—Equal Employment Opportunity Statistical Reporting System	* 82 FR 50872–50882
FTC–II–6—Discrimination Complaint System	75 FR 52749–52751 73 FR 33591–33634
FTC–II–7—Ethics Program Records	80 FR 9460–9465 75 FR 52749–52751 74 FR 17863–17866 * 73 FR 33591–33634
FTC–II–8—Employee Adverse Action and Disciplinary Records	80 FR 9460–9465 * 73 FR 33591–33634
FTC–II–9—Claimants Under Federal Tort Claims Act and Military Personnel and Civilian Employees' Claims Act	80 FR 9460–9465 74 FR 17863–17866 * 73 FR 33591–33634
FTC–II–10—Employee Health Care Records	* 82 FR 50872–50882
FTC–II–11—Personnel Security, Identity Management, and Access Control Records System	80 FR 9460–9465 * 73 FR 33591–33634
FTC–II–12—e-Train Learning Management System	80 FR 9460–9465 75 FR 52749–52751 73 FR 33591–33634
FTC–II–13—Staff Time and Activity Reporting (STAR) System	* 73 FR 33591–33634
FTC–III–1—Personnel Payroll System	80 FR 9460–9465 74 FR 17863–17866 * 73 FR 33591–33634
FTC–III–2—Travel Management System	* 82 FR 50872–50882
FTC–III–3—Financial Management System	80 FR 9460–9465 * 73 FR 33591–33634
FTC–III–4—Automated Acquisitions System	* 73 FR 33591–33634
FTC–III–5—Employee Transportation Program Records	* 82 FR 50872–50882
FTC–IV–1—Consumer Information System	80 FR 9460–9465 74 FR 17863–17866 * 73 FR 33591–33634
FTC–IV–2—Miscellaneous Office Correspondence Tracking System Records	* 73 FR 33591–33634
FTC–IV–3—National Do Not Call Registry System	74 FR 17863–17866
FTC–V–1—Freedom of Information Act Requests and Appeals	* 73 FR 33591–33634
FTC–V–2—Privacy Act Requests and Appeals	* 82 FR 50872–50882
FTC–VI–1—Mailing and Contact Lists	* 73 FR 33591–33634
FTC–VII–1—Automated Library Management System	* 73 FR 33591–33634
FTC–VII–2—Employee Locator (STAFFID) System	80 FR 9460–9465 * 73 FR 33591–33634
FTC–VII–3—Computer Systems User Identification and Access Records	80 FR 9460–9465 74 FR 17863–17866
FTC–VII–4—Call Detail Records	80 FR 9460–9465 74 FR 17863–17866
FTC–VII–5—Property Management System	* 73 FR 33591–33634
FTC–VII–6—Document Management and Retrieval System	* 73 FR 33591–33634
FTC–VII–7—Information Technology Service Ticket System	80 FR 9460–9465
FTC–VII–8—Administrative Service Call System	* 73 FR 33591–33634

[1] An asterisk (*) designates the last full **Federal Register** notice that includes all of the elements that are required to be in a System of Records Notice.

Appendices Applicable to all FTC Systems

Appendix I—Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records	73 FR 33591–33634
Appendix II—How To Make A Privacy Act Request.	73 FR 33591–33634
Appendix III—Locations of FTC Buildings and Regional Offices.	80 FR 9460–9465

The Privacy Act authorizes the agency to adopt routine uses that are consistent with the purpose for which information is collected. 5 U.S.C. 552a(b)(3); *see also* 5 U.S.C. 552a(a)(7).

On June 8, 2007, in response to a recommendation by The President's Identity Theft Task Force [2] and using model language issued by the Department of Justice, the FTC published a new routine use that allowed for disclosure of records to appropriate persons and entities for purposes of response and remedial efforts in the event of a breach of data contained in the protected systems. 72 FR 31835. This routine use, currently included in Appendix I, Authorized

[2] See *The President's Identity Theft Task Force Report* (September 2008) at *https://www.ftc.gov/sites/default/files/documents/reports/presidents-identity-theft-task-force-report/081021taskforcereport.pdf.*

Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records, states as follows:

(22) May be disclosed to appropriate agencies, entities, and persons when: (a) The FTC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the FTC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the FTC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FTC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Since 2007, OMB has determined that agencies needed authority to make disclosures that go beyond those contemplated by the original routine use. Thus, in January 2017, OMB issued in M–17–12, directing the Senior Agency Official for Privacy (SAOP) of each agency to include the following routine use in each of the agency's SORNs to facilitate the agency's response to a breach of its own records:

To appropriate agencies, entities, and persons when (1) [the agency] suspects or has confirmed that there has been a breach of the system of records, (2) [the agency] has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, [the agency] (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with [the agency's] efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.[3]

In M–17–12, OMB also directed the SAOP to ensure that agencies are able to disclose records in their systems of records that may reasonably be needed by another agency in responding to a breach by incorporating the following additional routine use into each of the agency's SORNs:

To another Federal agency or Federal entity, when [the agency] determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.[4]

Although the first proposed routine use required by M–17–12 is very similar to the language of the FTC's original routine use as finalized in 2007, OMB's 2017 version more specifically addresses harm to individuals and expands the concept to make clear that it is not limited to identity theft or financial/property damage.

With regard to the second proposed routine use, breaches affecting Federal personnel data have shown the need for an additional routine use that expressly allows an agency to disclose information from a system of records (*e.g.,* current contact information for the agency's employees or other individuals) to another Federal agency when reasonably needed by that agency to respond to a breach (*e.g.,* providing notice to the affected individuals), to take any other steps to prevent, minimize, or remedy the risk of harm to affected individuals or that agency's information systems, programs, or operations, and, if necessary, to address the broader risk of harm, if any, to the Federal Government or national security that may arise from the breach. The FTC's existing routine use, while allowing disclosure to other agencies, does so in the limited context of a breach of the FTC's own system(s) of records.

For the reasons stated above, the FTC believes that it is compatible with the collection of information pertaining to individuals affected by a breach to disclose Privacy Act records about them when, in doing so, it will help prevent, minimize or remedy a data breach or compromise that may affect such individuals. By contrast, the FTC believes that failure to take reasonable steps to help prevent, minimize or remedy the harm that may result from such a breach or compromise would jeopardize, rather than promote, the privacy of such individuals. Accordingly, the Commission concludes that it is authorized under the Privacy Act to adopt the proposed and updated routine uses permitting disclosure of Privacy Act records for the purposes described above.

In accordance with the Privacy Act, *see* 5 U.S.C. 552a(e)(4) and (11), the FTC is publishing notice of these routine uses and giving the public a 30-day period to comment before adopting them as final. The FTC has provided advance notice of this proposed system notice amendment to OMB and the Congress, as required by the Act, 5 U.S.C. 552a(r), and OMB Circular A–108 (2016). As set forth below, the Commission proposes that the new routine uses become effective on the date noted earlier, unless the Commission amends or revokes the routine uses on the basis of any comments received.

Accordingly, the FTC hereby proposes to amend Appendix I of its Privacy Act system notices, as published at 73 FR 33591, by revising item number (22), adding new item number (23), and re-designating the former item number (23) as (24) (without any other change) at the end of the existing routine uses set forth in that Appendix:

* * * * *

(22) To appropriate agencies, entities, and persons when (a) the FTC suspects or has confirmed that there has been a breach of the system of records, (b) the FTC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FTC (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FTC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(23) To another Federal agency or Federal entity, when the FTC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(24) May be disclosed to FTC contractors, volunteers, interns or other authorized individuals who have a need for the record in order to perform their officially assigned or designated duties for or on behalf of the FTC.

History

73 FR 33591–33634 (June 12, 2008).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–09333 Filed 5–2–18; 8:45 am]

BILLING CODE 6750–01–P

[3] Hereafter, this is referred to as the ''first proposed routine use.''

[4] Hereafter, this is referred to as the ''second proposed routine use.''

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Child Care and Development Fund, Annual Aggregate Report (ACF–800).

OMB No.: 0970–0150.

Description: Section 658K of the Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. 9858, as amended by Pub. L. 113–186) requires that States and Territories submit annual aggregate data on the children and families receiving direct services under the Child Care and Development Fund (CCDF). The implementing regulations for the statutorily required reporting are at 45 CFR 98.70 and 98.71. Annual aggregate reports include data elements represented in the ACF–800 reflecting the scope, type, and methods of child care delivery. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–800 without changes.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	56	1	42	2,352

Estimated Total Annual Burden Hours: 2,352.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–09384 Filed 5–2–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5913]

Assessing User Fees Under the Prescription Drug User Fee Amendments of 2017; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Assessing User Fees Under the Prescription Drug User Fee Amendments of 2017.'' This guidance concerns FDA's implementation of the Prescription Drug User Fee Amendments of 2017 (PDUFA VI) and certain changes in policies and procedures surrounding its application.

DATES: The announcement of the guidance is published in the **Federal Register** on May 3, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2017–D–5913 for ''Assessing User Fees Under the Prescription Drug User Fee Amendments of 2017; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential

Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance 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; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Peter Chen, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, Rm. 2112, Silver Spring, MD 20993, 240–402–8605, *Peter.Chen@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Assessing User Fees Under the Prescription Drug User Fee Amendments of 2017.'' This guidance concerns the implementation of the PDUFA VI and certain changes in policies and procedures surrounding its application. Because PDUFA VI created significant changes to the user fee program, this guidance serves to provide an explanation about the new fee structure and types of fees for which applicants are responsible.

PDUFA VI provides two different fee types that applicants pay: Application and program fees. This guidance describes when these fees are incurred and the process by which applicants can submit payments. The guidance also provides information on consequences of failing to pay PDUFA VI fees as well as the process for submitting a reconsideration and appeals request.

In the **Federal Register** of October 13, 2017 (82 FR 47748), FDA announced the availability of a draft version of this guidance and provided interested parties an opportunity to submit comments. We have reviewed the comments submitted to the docket and determined that they did not raise any relevant issues. This guidance does not include any substantive changes from the draft guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on assessing user fees under PDUFA VI. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov*.

Dated: April 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–09366 Filed 5–2–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Pain Management Best Practices Inter-Agency Task Force

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held for the Pain Management Best Practices Inter-Agency Task Force (Task Force). The meeting will be open to the public; public comment sessions will be held during the meeting.

DATES: The inaugural meeting will be held on Wednesday, May 30, 2018, from 9:30 a.m. to 5:00 p.m. Eastern Time and Thursday, May 31, 2018, from 9:00 a.m. to 3:30 p.m. Eastern Time The agenda will be posted on the Task Force website at *https://www.hhs.gov/ash/advisory-committees/pain/index.html*.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Great Hall, 200 Independence Avenue SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Alicia Richmond Scott, Designated Federal Officer, Pain Management Best Practices Inter-Agency Task Force, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, 200 Independence Avenue SW, Room 736E, Washington, DC 20201. Email: *paintaskforce@hhs.gov*.

SUPPLEMENTARY INFORMATION: Section 101 of the Comprehensive Addiction and Recovery Act of 2016 (CARA) authorizes the Secretary of Health and Human Services, in cooperation with

the Secretaries of Defense and Veterans Affairs, to convene the Task Force no later than two years after the date of the enactment of CARA (by July 22, 2018) and develop a report to Congress with updates on best practices and recommendations on addressing gaps or inconsistencies for pain management, including chronic and acute pain. The Task Force is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App), which sets forth standards for the formation and use of advisory committees.

The Task Force will identify, review, and determine whether there are gaps or inconsistencies between best practices for pain management, including chronic and acute pain, developed or adopted by federal agencies; propose updates to best practices and recommendations on addressing identified gaps or inconsistencies; provide the public with an opportunity to comment on any proposed updates and recommendations; and develop a strategy for disseminating such proposed updates and recommendations to relevant federal agencies and the general public.

This inaugural meeting of the Task Force will consist of an overview of various topics surrounding pain management, and the establishment of the Task Force subcommittee structure. Federal, state, local, and professional medical and health organization representatives will provide their current perspectives on pain management. The Task Force will discuss clinical best practices, gaps and inconsistencies focused on prevention and treatment; mental health and addiction; special populations; education; providers; payors; service and delivery; and research and innovation. Personal testimonials of people living in pain will be given. The Task Force will deliberate and vote on establishing subcommittees for developing the report to Congress. Information about the final meeting agenda will be posted prior to the meeting on the Task Force website: *https://www.hhs.gov/ash/advisory-committees/pain/index.html.*

Members of the public are invited to participate in person or by webcast. To join the meeting, individuals must pre-register at the Task Force website at *https://www.hhs.gov/ash/advisory-committees/pain/index.html.* Seating will be provided first to those who have pre-registered. Anyone who has not pre-registered will be accommodated on a first come, first served basis if additional seats are available 10 minutes before the meeting starts. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate the special accommodation when registering online or by notifying the Office of the Assistant Secretary for Health via email at *paintaskforce@hhs.gov* by May 22, 2018. The subject line of the email should read, ''Task Force Meeting Accommodations.'' Non-U.S. citizens who plan to attend in person are required to provide additional information and must notify the Task Force staff via email at *paintaskforce@hhs.gov* 10 business days before the meeting, May 16, 2018. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *https://www.hhs.gov/ash/advisory-committees/pain/index.html.*

Members of the public can provide comments at the Task Force meeting during the following designated dates and times: May 30, 2018 from 11:40 a.m. to 12:10 p.m. Eastern Time and May 31, 2018 from 1:50 p.m. to 2:20 p.m. Eastern Time. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit their written comments. Written comments should not exceed three pages in length. Individuals submitting written comments should submit their comments through the Federal eRulemaking Portal at *http://www.regulations.gov* by May 25, 2018.

Dated: April 26, 2018.

Vanila M. Singh,

Chief Medical Officer, Office of the Assistant Secretary for Health.

[FR Doc. 2018–09379 Filed 5–2–18; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Stakeholder Listening Session in Preparation for the 71st World Health Assembly; Meeting

Subject: Office of Global Affairs: Stakeholder Listening Session in preparation for the 71st World Health Assembly

Time and date: Friday, May 11th, 2018, 3:00 p.m.–4:30 p.m. EST

Place: Hubert H. Humphrey Building, Auditorium, 200 Independence Ave, SW, Washington, District of Columbia 20201.

Status: Open, but requiring RSVP to *OGA.RSVP@hhs.gov* by Monday, May 7, 2018.

Purpose: The U.S. Department of Health and Human Services (HHS)—charged with leading the U.S. delegation to the 71st World Health Assembly—will hold an informal Stakeholder Listening Session on Friday, May 11 from 3:00 p.m. to 4:30 p.m., in the Hubert H. Humphrey Building Auditorium, 200 Independence Ave. SW, Washington, DC 20201.

The Stakeholder Listening Session will help the HHS Office of Global Affairs prepare the U.S. delegation for the World Health Assembly by taking full advantage of the knowledge, ideas, feedback, and suggestions from all individuals interested in and affected by agenda items to be discussed at the 71st World Health Assembly. Participants will be limited to 3 minute statements per agenda item. Your input will contribute to informing U.S. positions as we negotiate with our international colleagues at the World Health Assembly on these important health topics.

The listening session will be organized by agenda item, and participation is welcome from all individuals, including individuals familiar with the following topics and groups:

- Public health and advocacy activities;
- State, local, and Tribal issues;
- Private industry;
- Minority health organizations; and
- Academic and scientific organizations.

All agenda items to be discussed at the 71st World Health Assembly can be found at this website: *http://apps.who.int/gb/ebwha/pdf_files/WHA71/A71_1-en.pdf*

RSVP: Due to security restrictions for entry into the HHS Hubert H. Humphrey Building, RSVPs are required for this event. Please send your full name and organization to *OGA.RSVP@hhs.gov* . Please RSVP no later than Monday, May 7, 2018.

If you are *not* a U.S. citizen *and* do not have a U.S. government issued form of identification, please note this in the subject line of your RSVP, and our office will contact you to gain additional biographical information required for your clearance. Photo identification for all attendees is required for building access without exception.

Written comments are welcome and encouraged, even if you are planning on attending in person. Please send your written comments to *OGA.RSVP@hhs.gov.*

We look forward to hearing your comments related to the 71st World Health Assembly agenda items.

Dated: April 25, 2018.

G. Garrett Grigsby,

Director for Global Affairs.

[FR Doc. 2018–09348 Filed 5–2–18; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Biobehavioral and Behavioral Sciences Subcommittee.

Date: June 11, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Minki Chatterji, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS 6710B Rockledge Drive, Rm. 2121D, Bethesda, MD 20892–7501, 301–827–5435, *minki.chatterji@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: April 27, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–09354 Filed 5–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: May 30–31, 2018.

Time: 7:00 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: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–011: Early Phase Clinical Trials in Imaging and Image-Guided Interventions.

Date: May 30, 2018.

Time: 3:30 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Songtao Liu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20817, 301–827–6828, *songtao.liu@nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology A Study Section.

Date: May 31–June 1, 2018.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel St. Louis—Westport, 1973 Craigshire Rd, St. Louis, MO 63146.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–2409, *grossmanrs@mail.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: May 31, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: May 31–June 1, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, *ybi@csr.nih.gov*.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: May 31–June 1, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Etiology Study Section.

Date: May 31–June 1, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr. Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nursing and Related Clinical Sciences.

Date: May 31–June 1, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Martha L Hare, RN, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroendocrinology, Neuroimmunology, Rhythms and Sleep Study Section.

Date: May 31–June 1, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Royal Sonesta Harbor Court, 550 Light Street, Baltimore, MD 21202.

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Development—2 Study Section.

Date: May 31–June 1, 2018.

Time: 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: May 31–June 1, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior Study Section.

Date: May 31–June 1, 2018.

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: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, 301–827–6480, *weikts@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Innovative Immunology.

Date: May 31, 2018.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bourbon Orleans Hotel, 717 Orleans Street, New Orleans, LA 70117.

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301–435–1221, *andrea.keane-myers@nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: May 31–June 1, 2018.

Time: 8:00 a.m. to 2:00 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: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6830, *unja.hayes@nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: May 31–June 1, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@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: April 27, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–09352 Filed 5–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Applications in Oncological Sciences.

Date: May 23, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM18–017: Expanding the Human Genome Editing Repertoire (U01s).

Date: May 24, 2018.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, *Lorangd@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Academic Research Enhancement Award.

Date: May 25, 2018.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; International and Cooperative Projects 1—Member Conflicts.

Date: May 29, 2018.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Brian H Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 26, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–09355 Filed 5–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–360: Characterization of Mycobacterial Induced Immunity in HIV-Infected and Uninfected Individuals (R21).

Date: May 4, 2018.

Time: 1:00 p.m. to 2:00 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: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS and Related Research Special Topics.

Date: May 4, 2018.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: April 27, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–09353 Filed 5–2–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N038; FXES11140100000–189–FF01E00000]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Proposed Skookumchuck Wind Energy Project Habitat Conservation Plan in Lewis and Thurston Counties, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent for scoping; notice of public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide this notice to open a public scoping period and announce a public open house meeting in accordance with requirements of National Environmental Policy Act (NEPA) regulations. We intend to prepare an environmental impact statement (EIS) to evaluate the impacts on the human environment associated with operations of a proposed wind energy project, for which the Service anticipates receipt of an application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA). Incidental to its operations, the wind project is likely to take the marbled murrelet, listed as threatened under the ESA, as well as the bald eagle and golden eagle, both of which are protected under the Bald and Golden Eagle Protection Act. The project proponent is Skookumchuck Wind Energy Project, LLC, an affiliate of Renewable Energy Services. The wind project would be located near Yelm, Washington, in Lewis and Thurston Counties, and would consist of up to 38 commercial wind turbines and associated infrastructure.

DATES: You may submit information, questions, and comments until June 4, 2018.

Public meetings: During the scoping period, the Service will hold two public scoping open house meetings: One in Lacey, Washington, and one in Centralia, Washington. The Lacey scoping meeting will be held on May 8, 2018, from 6 to 8 p.m., and the Centralia scoping meeting will be held on May 10, 2018, from 6 to 8 p.m.

The public scoping meetings will provide Skookumchuck Wind Energy Project, LLC, and the Service an opportunity to present information pertinent to the wind project and for the public to ask questions and provide written comments and information on the scope of issues and alternatives we should consider when preparing the EIS. No oral comments will be accepted during the scoping meetings.

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

- *U.S. mail:* U.S. Fish and Wildlife Service, c/o Mark Ostwald, 510 Desmond Dr. SE, Suite 102, Lacey, WA 98503.
- *Email: wfwocomments@fws.gov*. Include ''Skookumchuck Wind'' in the subject line of the message.
- *Internet:* You may obtain copies of this notice on the internet at *https://www.fws.gov/wafwo/* (see **FOR FURTHER INFORMATION CONTACT** section).

You may also submit written comments during the public scoping meeting. See the Public Availability of Comments section for more information.

Public meetings: The addresses of the scoping meetings are as follows:

Lacey, Washington: South Puget Sound Community College, 4220 6th Avenue SE, Lacey, WA 98503.

Centralia, Washington: Centralia College, Walton Science Center, Room 100, 600 Centralia College Blvd., Centralia, WA 98531.

FOR FURTHER INFORMATION CONTACT: Mark Ostwald, by telephone at 360–753–9564, or by email at *Mark_Ostwald@fws.gov*. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a)(2)(A) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1539(a)(2)(A)), the Skookumchuck Wind Energy Project, LLC, intends to submit a habitat conservation plan (HCP) in support of an incidental take permit (ITP) application for the ESA-listed marbled murrelet (*Brachyamphus marmoratus*), and the bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*), both of which are not listed

species under the ESA but are protected by the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668–668d). Hereafter, the marbled murrelet, bald eagle and golden eagle collectively will be referred to as the ''covered species.'' To meet our requirements under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), we intend to prepare a draft environmental impact statement (DEIS), and later, a final environmental impact statement (FEIS), to evaluate the effects on the human environment of authorizing take under the ESA and BGEPA by the proposed wind project.

The project proponent is seeking ITP coverage for the operation and maintenance of 38 commercial wind turbines. This includes, without limitation, ITP coverage for protected species colliding with both stationary and operating project structures. In contrast, the project proponent does not intend to seek ITP coverage for the construction phase of the wind project, which may include, without limitation, constructing roads, turbine pads, and erecting turbines. Initial project construction is anticipated to begin in 2018. The project proponent intends to commence operations in 2019.

The Service's purpose and need for its proposed action will be to process the project proponent's request for an ITP for the project in accordance with the requirements of Section 10(a) of the ESA and associated regulations, and to either grant, grant with conditions, or deny the ITP in compliance with the requirements of applicable law including, without limitation, the ESA and BGEPA.

This scoping notice was prepared pursuant to the requirements of the NEPA and its implementing regulations in the Code of Federal Regulations at 40 CFR 1506.6. The primary purpose of the scoping process is for the public and other parties to assist in developing the DEIS by identifying important issues and alternatives that should be considered. We will prepare an FEIS prior to issuing an ITP decision.

Background

Endangered Species Act

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term ''take'' means to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct'' (16 U.S.C. 1532(19)). The term ''harm'' is defined by regulation as ''. . . an act which actually kills or injures wildlife.'' Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering'' (50 CFR 17.3). The term ''harass'' is defined in the regulations as ''an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering'' (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Bald and Golden Eagle Protection Act

Although the project proponent is requesting incidental take for bald and golden eagles under section 10(a)(1)(B) of the ESA, consistency with the requirements of BGEPA (16 U.S.C. 668–668d) is also necessary. The BGEPA prohibits take of eagles where ''take'' is defined as ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb'' and where ''disturb'' is further defined as ''to agitate or bother'' a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available: (1) Injury to an eagle; (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior (50 CFR 22.3).

Under 50 CFR 22.26, the Service has the authority to authorize take of bald and golden eagles (generally, disturbance, injury, or killing) that occurs incidental to an otherwise lawful activity. For the Service to issue such a permit, the following required determinations must be met (see 50 CFR 22.26(f)):

1. The taking will be compatible with the preservation of the bald or golden eagle (further defined by the Service to mean ''consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species'');
2. The taking will protect an interest in a particular locality;
3. The taking will be associated with, but not the purpose of, the activity;
4. The taking will be avoided and minimized by the applicant to the extent practicable;
5. The applicant will have applied all appropriate and practical compensatory mitigation measures, when required pursuant to 50 CFR 22.26(c);
6. Issuance of the permit will not preclude issuance of another permit necessary to protect an interest of higher priority as set forth in 50 CFR 22.26(e)(7); and
7. Issuance of the permit will not interfere with ongoing civil or criminal action concerning unpermitted past eagle take at the project.

The Service can provide eagle take authorization through an ITP for an HCP, which confers take authorization under the BGEPA without the need for a separate permit, as long as the permit issuance criteria under both ESA and BGEPA will be met by the conservation measures included in the HCP. *See* 50 CFR 22.11(a).

Skookumchuck Wind Project Habitat Conservation Plan

Project Description

Skookumchuck Wind Energy Project, LLC, intends to start project construction in 2018, and commence wind turbine operations in 2019. The goal of Skookumchuck Wind Energy Project, LLC, is to receive an ITP prior to commencing commercial operations of the wind turbines in 2019.

The majority of the wind project, including all of the 38 turbines, is located in Lewis County, Washington, with some supporting infrastructure located in Thurston County, Washington. The wind turbines are proposed to be constructed on a

prominent ridgeline on the Weyerhaeuser Vail Tree Farm, approximately 18 miles east of Centralia, Washington.

The project consists of the following components: A maximum of 38 wind turbines, with an expected output of 137 megawatts (MW); a maximum wind turbine height of 492 feet (from ground to vertical blade tip); a maximum rotor diameter of 446 feet; approximately 36.5 miles of existing roads that will be upgraded; approximately 3.9 miles of new road that will be constructed; 17 miles of buried medium voltage collection cable that will transport power to a substation along the ridgeline; and 15 miles of transmission line that will transport power to the Tono Substation.

Covered Species

Marbled Murrelet

The marbled murrelet is a seabird that forages on marine waters and nests in mature and old-growth forests, generally within 55 miles of marine waters. Because the marbled murrelet is flying between forest nest sites and marine foraging areas, the species is susceptible to collision with the wind project turbines and possibly other related infrastructure, and thus mortality is anticipated.

The marbled murrelet was listed as threatened under the ESA in 1992 in California, Oregon, and Washington. The marbled murrelet is a relatively long-lived species with low recruitment potential. Low breeding rates, coupled with poor nesting success, have resulted in a population decline estimated at approximately 4.4 percent per year in Washington.

The radar surveys conducted for this project, along with recent observations of marbled murrelet occupancy behaviors on adjacent private forest lands in 2016, indicate that this geographic area continues to support nesting marbled murrelets. The wind project poses a risk of collision to marbled murrelets transiting to and from marine foraging areas and nesting sites located in the vicinity of the Mineral Block portion of the Gifford Pinchot National Forest and private lands. The closest proposed turbine locations are 0.4 miles from a known marbled murrelet nesting site.

National Forest lands in the Mineral Block landscape are designated as critical habitat that is essential for the survival and recovery of the marbled murrelet. The area is also important because it represents the southernmost distribution of marbled murrelet nesting within the listed range of the species in the Washington Cascades. Past survey efforts have documented a minimum of seven murrelet nest sites in the Mineral Block area, indicating that the area supports a local colony of marbled murrelets with nesting fidelity to this landscape.

There is uncertainty regarding the number of marbled murrelet mortalities that may occur due to wind project operations. The project proponent has indicated its intent to a request a 30-year permit term.

Bald Eagle and Golden Eagle

Bald and golden eagles can also be found in the project footprint and the surrounding areas, and will also be subject to collision with the wind project turbines and possibly other related infrastructure. Bald eagle populations are considered to be stable and increasing throughout most of the United States. Conversely, the golden eagle has been identified as a State candidate for listing due to declines in the number of nesting pairs at historic nests. Golden eagle populations are thought to be in a slight decline in some parts of the United States.

Although bald eagles are generally associated with aquatic habitat and are often found in higher numbers near water, they are wide ranging and can be found in almost any type of habitat, either migrating or moving between foraging and sheltering areas. Golden eagles are thought to be associated primarily with arid landscapes east of the Cascades; however, small numbers of golden eagles are known to nest and migrate west of the Cascade crest. Both eagle species were observed during preconstruction eagle surveys. During 418 hours of preconstruction eagle surveys at the proposed project site in 2016, over 200 minutes involved sightings of bald eagles, and over 35 minutes involved sightings of golden eagles.

Both bald and golden eagles are known to collide with wind turbines, causing injury and often death to the affected eagle. Since eagles have been observed using the project footprint and surrounding area, a potential injury and mortality risk to these species exists as a result of wind project operations. The potential risk to each species from this project will be analyzed in detail in the DEIS, using available tools such as the Service's Collision Risk Model and considering all cumulative and indirect effects.

Draft Environmental Impact Statement

NEPA requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on the criteria at 40 CFR 1508.27, we have determined, and the project proponent has expressed agreement, that the proposed Skookumchuck Wind Energy Project may have significant effects on the human environment.

To determine whether a proposed Federal action would require the preparation of an EIS, the Service must consider two distinct factors: Context and intensity (40 CFR 1508.27; Service and National Marine Fisheries Service HCP Handbook 2016). Context refers to the geographic scale (local, regional, or national) of significance of short- and/or long-term effects/impacts of a proposed action. Intensity refers to the severity of the effects/impacts relative to the affected settings, including the degree to which the proposed action affects an endangered or threatened species or designated critical habitat; public health or safety; scientific, historic, or cultural resources; or other aspects of the human environment.

In determining whether the preparation of an EIS is warranted, we must also consider the 10 components of intensity, as set forth under 40 CFR 1508.27(b):

1. Impacts that may be both beneficial and adverse. A significant impact may exist even if the Federal agency believes that on balance the effect will be beneficial.

2. The degree to which the proposed action affects public health or safety.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

5. The degree to which the potential impacts are highly uncertain or involve unique or unknown risks.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The Service performed internal NEPA scoping for the wind project and identified the environmental issues requiring detailed analysis, as well as connected, similar, and cumulative actions. In this case, and after considering the above factors, the Service has determined that the proposed ITP action is of sufficient size and complexity to warrant the preparation of an EIS, is similar to previous permit actions taken by the Service's Pacific Region that likewise required the preparation of an EIS, and may have significant effects on the human environment. On that basis and in accordance with regulations at 40 CFR 1501.4, 1507.3, and 1508.27, the Service believes preparation of an EIS is warranted to analyze the project-specific and cumulative environmental impacts associated with this proposed ITP action.

Therefore, before deciding whether to issue an ITP, we will prepare a DEIS, and later, an FEIS, to analyze the environmental impacts associated with the Service's ITP decision on the human environment. We do not intend to prepare an environmental assessment for the proposed action.

The DEIS will include a reasonable range of alternatives. Such alternatives may include, but are not limited to, variations in wind turbine curtailment by individual wind turbine and season, variations in covered species mitigation strategies, variations in implementation and effectiveness monitoring, or a combination of these factors. Additionally, a No Action Alternative will be included. Under the No Action Alternative, the Service would not issue an ITP, and Skookumchuck Wind Energy Project, LLC, would be obligated to avoid take of the covered species, or risk violation of Federal law.

The DEIS will identify and describe direct, indirect, and cumulative impacts on elements of the human environment that could occur with the implementation of the proposed action and alternatives. The Service will also identify measures, consistent with NEPA and other relevant considerations of national policy, to avoid or minimize any significant effects of the proposed action on the quality of the human environment. The Service will publish a notice of availability in the **Federal Register** and a request for comment on the draft EIS and the Skookumchuck Wind Energy Project, LLC, draft HCP.

Request for Information

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party on this notice. We will consider these comments in developing the DEIS. We seek specific comments on:

1. Biological information and relevant data concerning the covered species and other wildlife;

2. Information on marbled murrelet collisions with stationary and moving objects in the terrestrial environment;

3. Information on bald eagle, golden eagle, and marbled murrelet collisions with wind turbines, particularly in a forested environment;

4. Potential direct, indirect, and cumulative impacts that implementation of the proposed wind project and mitigation/minimization measures could have on the covered species; and other endangered or threatened species, and their associated ecological communities or habitats; and other aspects of the human environment;

5. Whether there are connected, similar, or reasonably foreseeable cumulative actions;

6. Other possible reasonable alternatives to the proposed permit action that the Service should consider, including additional or alternative avoidance, minimization, and mitigation measures;

7. Other current or planned activities in the vicinity of the wind project area and their possible impacts on the marbled murrelet, bald eagle, and golden eagle; and

8. Other information relevant to the proposed wind project and impacts to the human environment.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection by appointment, during normal business hours, at the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Scoping Meeting

See **DATES** for the dates, times, and locations of the public scoping meetings. The primary purpose of the meetings and the public comment period is to provide the public with a general understanding of the background of the proposed action and to solicit written comments and information on the scope of issues and alternatives we should consider when preparing the DEIS. Written comments will be accepted at the meetings. No opportunity for oral comments will be provided. Comments may also be submitted by the methods listed in **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the public scoping meetings should contact the Service's Washington Fish and Wildlife Office, using one of the methods listed in **ADDRESSES** as soon as possible. In order to allow sufficient time to process requests, please make contact no later than one week before the public meetings. Information regarding this proposed action is available in alternative formats upon request.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1501.7, 40 CFR 1506.5, 1506.6, and 1508.22).

Theresa Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2018–09405 Filed 5–2–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–25422;PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before April 14,

2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by May 18, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 14, 2018. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

ARKANSAS

Benton County

Carpenter Building, 136 E Main, Gentry, SG100002447

Calhoun County

Shumaker Naval Ammunition Depot (NAD) 500-Man Barracks, S side of AR 274 between Spellman Rd. & AR 203, East Camden, SG100002448

Shumaker Naval Ammunition Depot (NAD) Administration Building, 6415 Spellman Rd., East Camden, SG100002449

Craighead County

Stuck, C.S. & Sons, Lumber Office Building, 215 Union, Jonesboro, SG100002450

Logan County

Mount Salem Church and School, 553 Mt. Salem Rd. #101, Paris vicinity, SG100002452

Nevada County

Nevada County Courthouse, 215 E 2nd St., Prescott, SG100002454

Ouachita County

Washington Street Historic District (Boundary Increase), N & S Agee St. roughly between Clifton & Maple Sts., Camden, BC100002455

Pulaski County

Fulk—Arkansas Democrat Building, (Thompson, Charles L., Design Collection TR), 613–615 Main St., Little Rock, MP100002456

Mosaic Templars State Temple, 906 S Broadway St., Little Rock, SG100002457

Sevier County

Lockesburg High School Gymnasium, 128 E Main St., Lockesburg, SG100002458

Washington County

Deepwood House, 4697 W Finger Rd., Fayetteville vicinity, SG100002459

NEW YORK

Erie County

New York Central Black Rock Freight House, (Black Rock Planning Neighborhood MPS), 68–120 Tonawanda St., Buffalo, MP100002461

Greene County

Haines, Aaron, Family Cemetery, 5132 NY 23A, Haines Falls, SG100002462

Niagara County

Seippel Bakery and Richard Apartments, 531 3rd St., Niagara Falls, SG100002463

Onondaga County

Hawley-Green Street Historic District (Boundary Increase), Bounded by Wayne, Lodi, Hawley, & N McBride Sts., Syracuse, BC100002464

Orange County

Crane House, 220 Dosen Rd., Wallkill vicinity, SG100002465

St. Lawrence County

First Baptist Church of Ogdensburg Complex, 617 State St., Ogdensburg, SG100002466

TEXAS

Bell County

Gault Archaeological Site, Address Restricted, Florence vicinity, SG100002469

Bexar County

St. John's Seminary, 222 E Mitchell St., San Antonio, SG100002470

Trinity University Historic District, Roughly bounded by E. Hildebrand, E Mulberry, & Bushnell Aves., Stadium Dr., Kings Ct., Ledge, Shook, & Campus Lns., San Antonio, SG100002471

Hays County

Four Winns Ranch, 234 & 236 Winn Valley Dr., Wimberly, SG100002472

Tarrant County

Oakwood Cemetery Historic District, 701 Grand Ave., Fort Worth, SG100002473

WASHINGTON

King County

Covington Electrical Substation, Bonneville Power Administration, (Bonneville Power Administration Pacific Northwest Transmission System MPS), 28401 Covington Way SE, Covington, MP100002475

A request for removal has been made for the following resource:

ARKANSAS

Craighead County

Stuck, C.A., and Sons Lumber, 215 Union St., Jonesboro, OT02001597

Additional documentation has been received for the following resource:

UTAH

Salt Lake County

Clift Building, (Salt Lake City Business District MRA), 10 W Broadway (300 South), Salt Lake City, AD82004139

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

KENTUCKY

Jefferson County

Louisville Veterans Administration Hospital, (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 800 Zorn Ave., Louisville, MP100002460

SOUTH DAKOTA

Meade County

Fort Meade Veterans Administration Hospital, (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 113 Comanche Rd., Fort Meade, MP100002467

Authority: Section 60.13 of 36 CFR part 60

Dated: April 16, 2018.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program and Keeper, National Register of Historic Places.

[FR Doc. 2018–09383 Filed 5–2–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04073000, XXXR4081X3, RX.05940913. 7000000]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

DATES: The meeting will be held on Tuesday, May 22, 2018, via WebEx/

conference call beginning at 11:00 a.m. (EDT), 9:00 a.m. (MDT), and 8:00 a.m. (PDT) and concluding three (3) hours later in the respective time zones.

FOR FURTHER INFORMATION CONTACT: Katrina Grantz, Bureau of Reclamation, telephone (801) 524–3635; email at *kgrantz@usbr.gov*; facsimile (801) 524–5499.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act 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 Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) GCDAMP budget and workplan for fiscal year 2019; (2) planned or ongoing experiments in 2018; and (3) current basin hydrology and reservoir operations. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/rm/amp/amwg/mtgs/18may22/index.html*.

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Individuals requiring special accommodations to access the public meeting should contact Katrina Grantz, Bureau of Reclamation, Upper Colorado Regional Office, by email at *kgrantz@usbr.gov,* or by telephone at (801) 524–3635, at least (5) business days prior to the meeting so that appropriate arrangements can be made. To participate in the WebEx/conference call, please use the instructions below. There will be limited ports available, so if you wish to participate, please contact Linda Whetton at (801) 524–3880 to register.

WebEx Information:

1. Go to: *https://ucbor-events.webex.com/ucbor-events/onstage/g.php?MTID=e194154951fe3d0bbc601a85b1da93b87*.

2. If requested, enter your name and email address.

3. If a password is required, enter the meeting password: AMWG.

4. Click ''Join Now''.

Audio Conference Information:

- Phone Number: (877) 913–4721.
- Passcode: 3330168.
- Event Number: 995 428 766.

Public Disclosure of Comments: Time will be allowed for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Katrina Grantz, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 8100, Salt Lake City, Utah 84138; email at *kgrantz@usbr.gov*; or facsimile (801) 524–5499, at least five (5) business days prior to the meeting. Any written comments received will be provided to the AMWG members.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 15, 2018.

Katrina Grantz,

Chief, Adaptive Management Work Group, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 2018–09406 Filed 5–2–18; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 337–TA–1064

Certain Shielded Electrical Ribbon Cables and Products Containing the Same: Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Consent Order Stipulation and Proposed Consent Order; Issuance of Consent Order and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 20) of the presiding administrative law judge (''ALJ''), terminating the above-captioned investigation based on a consent order stipulation and proposed consent order. The Commission has issued the consent order and has also determined to terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. 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 August 7, 2017, based on a complaint filed on behalf of 3M Company and 3M Innovative Properties Company, both of St. Paul, Minnesota. 82 FR 36828–29. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of U.S. Patent Nos. 8,933,333; 9,601,236; and 9,627,106. The complaint further alleges that a domestic industry exists. The Commission's notice of investigation named the following as respondents: Amphenol Corporation and Amphenol Interconnect Products, both of Endicott, New York; Amphenol Assemble Technology (Xiamen) Co., Ltd. and Amphenol (Xiamen) High Speed Cable Co., all of Fujian, China; and Amphenol East Asia Limited (Taiwan) of Taoyuan County, Taiwan. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation.

On March 22, 2018, complainants and respondents jointly moved to terminate the investigation with respect to all infringement allegations and respondents based on a consent order stipulation and proposed consent order. OUII supported the joint motion.

The ALJ issued the subject ID (Order No. 20) on April 3, 2018, granting the joint motion for termination. She found that the joint motion satisfied Commission Rule 210.21(c). The ALJ further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation is not contrary to the public interest. No petitions for review were filed.

The Commission has determined not to review the ID, issued the consent order, and terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.
Issued: April 27, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–09339 Filed 5–2–18; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0088]

Bi-Weekly Public Information Sessions; National Industrial Security Program Operations Manual Insider Threat Program and Security Executive Agent Directive 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff plans to hold a series of bi-weekly public meetings, to provide industry and affected individuals with the opportunity to interface with the NRC regarding the National Industrial Security Program Operating Manual (NISPOM) Insider Threat Program (ITP) Change 2 and the Office of the Director of National Intelligence (ODNI) Security Executive Agent Directive 3 (SEAD 3) implementation requirements.

DATES: The upcoming bi-weekly public meetings will be held on the following dates: Wednesday, May 2, 2018; Wednesday, May 16, 2018; Wednesday, May 30, 2018; and Wednesday, June 13, 2018. See section II, ''Public Meeting,'' of this document for more information.

ADDRESSES: Please refer to Docket ID NRC–2018–0088 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0088. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Alicia Williamson, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1878, email: *Alicia.Williamson@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 13587, ''Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,'' was adopted by the National Industrial Security Program (NISP) to cover all contractors and licensees who have exposure to classified information.[1] Issued on May 18, 2016, the NISPOM Change 2 describes development and implementation of an ITP.[2] The NRC licensees who hold a possessing or non-possessing facility clearance are covered under the NISPOM ITP.

In December 2016, the ODNI issued SEAD 3, ''Reporting Requirements for Personnel with Access to Classified information or Hold a Sensitive Position,'' to executive branch agencies and covered individuals.[3] These individuals include NRC employees, contractors, licensees, licensees' contractors, and other individuals whom NRC has granted national security clearances. The NRC staff previously held two public meetings on the NISPOM ITP and SEAD 3 requirements on February 21, 2018, and March 12, 2018. The meeting summaries for each public meeting can be found in ADAMS under Accession Numbers ML18081A251 and ML18088A077, respectively.

II. Public Meeting

The ''Bi-Weekly NRC Public Information Sessions on Insider Threat Program and Security Executive Agent Directive 3,'' are Category 2 meetings and will be bi-weekly held from Wednesday, May 16, 2018, until Wednesday, June13, 2018. The public is invited to participate in these meetings by discussing regulatory issues with the NRC at designated points identified on the agendas. Each session will occur from 2:30 p.m. to 3:30 p.m. (EST). Interested stakeholders may participate by Webinar and teleconference. The webinar link is: *https://global.gotomeeting.com/join/194862901*. The conference call number is 1–877–620–1428, Passcode: 99851. The Webinar link and conference call number will remain the same for all meetings. Please check the NRC's Public Meeting website, *https://www.nrc.gov/pmns/mtg* for updates or cancellations or contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated at Rockville, Maryland, this 27th day of April, 2018.

For the Nuclear Regulatory Commission.

Marissa Bailey,

Director, Division of Security Operations, Office of Nuclear Security and Incident Response.

[FR Doc. 2018–09349 Filed 5–2–18; 8:45 am]

BILLING CODE 7590–01–P

[1] Executive Order 13587, ''Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information.'' Found at: (*https://obamawhitehouse.archives.gov/the-press-office/2011/10/07/executive-order-13587-structural-reforms-improve-security-classified-net*).

[2] National Industrial Security Program Operating Manual (NISPOM). Found at: (*http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/522022M.pdf*).

[3] Office of the Director of National Intelligence (ODNI) Security Executive Agent Directive 3 (SEAD 3). Found at: (*https://www.dni.gov/files/NCSC/documents/Regulations/SEAD-3-Reporting-U.pdf*).

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943; NRC–2012–0281]

Crow Butte Resources, Inc.; Marsland Expansion Area

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to source materials license SUA–1534 that would authorize Crow Butte Resources, Inc., to construct and operate an in situ uranium recovery (ISR) expansion facility at the Marsland Expansion Area (MEA) site in Dawes County, Nebraska. The NRC staff has prepared an environmental assessment (EA) and finding of no significant impact (FONSI) for this licensing action.

DATES: The EA and FONSI referenced in this document are available on May 3, 2018.

ADDRESSES: Please refer to Docket ID NRC–2012–0281 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0281. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *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 via email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0867, email: *Jean.Trefethen@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC staff is considering a request for an amendment to source materials license SUA–1534, issued to Crow Butte Resources, Inc. (CBR or the licensee), to authorize construction and operation of the MEA, an ISR expansion facility that would be located in Dawes County, Nebraska. In accordance with NRC's regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' that implement the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the NRC staff has prepared an EA documenting its environmental review of the license amendment application that included an environmental report (ADAMS Accession No. ML17325B322) and technical report, as amended (ADAMS Accession Nos. ML15328A422, ML16155A267, ML16155A268, and ML17193A314).

On December 15, 2017 (82 FR 59665), the NRC issued the draft FONSI and draft EA for the proposed MEA license amendment for public review and comment. The NRC received 20 comments. Appendix A of the EA contains the NRC's responses to those comments. Based on the environmental review and consideration of comments received on the draft EA, the NRC staff has determined that the proposed action will not significantly affect the quality of the human environment and preparation of an environmental impact statement is not required, and therefore a FONSI is appropriate.

II. Summary of Environmental Assessment

The EA is publicly available in ADAMS using ADAMS Accession No. ML18103A145. A summary description of the proposed action and expected environmental impacts is provided in this notice.

Description of the Proposed Action

The proposed Federal action is approval of CBR's license amendment application, which would authorize the expansion of CBR's commercial-scale uranium recovery operations to the MEA. Under the proposed action, the licensee would perform construction, uranium recovery operations, aquifer restoration, and decommissioning activities at the proposed MEA, which would encompass approximately 4,622 acres (1,870 hectares). The CBR has proposed eleven production units in the MEA, which is located 11.1 miles (17.9 kilometers) south-southeast of the central processing facility (CPF) at the existing CBR license area. Uranium recovery operations at the MEA would include injection of lixiviant into and pumping of water from the uranium-bearing aquifer, removal of uranium from the pumped water using ion exchange, and transport of loaded ion exchange resin to the CPF at the existing CBR license area for further processing into yellowcake. Approval of the proposed action would authorize CBR to conduct uranium recovery operations at the MEA in accordance with its license amendment application, source materials license SUA–1534, and the requirements in 10 CFR part 40, ''Domestic Licensing of Source Material.''

Environmental Impacts of the Proposed Action

In the EA, the NRC staff assessed the potential environmental impacts from the construction, operation, aquifer restoration, and decommissioning of the proposed MEA on the following resource areas: Land use; geology and soils; water resources; ecological resources; climatology, meteorology, and air quality; historic and cultural resources; demographics and socioeconomics; environmental justice; transportation; noise; scenic and visual resources; public and occupational health; and hazardous materials and waste management. The NRC staff also considered the cumulative impacts from past, present, and reasonably foreseeable future actions when combined with the proposed action.

All long-term impacts were determined to be SMALL. The NRC staff concluded that approval of the proposed action would not result in a significant increase in short-term or long-term radiological risk to public health or the environment. The NRC staff identified a potential for MODERATE short-term impacts to a few resource areas, including noise (temporary impacts to the nearest resident to the MEA during construction), ecological resources (localized and temporary impacts resulting from the loss and slow recovery of forest habitat), and groundwater resources (short-term lowering of the potentiometric surface of the Basal Chadron Sandstone aquifer). While potential MODERATE impacts would be expected for specific aspects of these resource areas, the

impacts are short-term and temporary. Therefore, the NRC staff concluded that the overall impacts related to these resource areas would be SMALL. Furthermore, the NRC staff found that there would be no significant negative cumulative impact to any resource area from the MEA when added to other past, present, and reasonably foreseeable future actions, and that a potential positive cumulative socioeconomic impact could result from additional tax revenue, employment, and local purchases.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Under the no-action alternative, the NRC would not authorize CBR to construct and operate the MEA. In situ uranium recovery activities would not occur within the MEA and the associated environmental impacts also would not occur.

III. Finding of No Significant Impact

In accordance with the NEPA and 10 CFR part 51, the NRC staff has conducted an environmental review of CBR's request for a license amendment to NRC source materials license SUA–1534 that would authorize construction and operation of the MEA. Based on its environmental review of the proposed action, as documented in the EA, the NRC staff has determined that granting the requested license amendment would not significantly affect the quality of the human environment. Therefore, the NRC staff has determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

Dated at Rockville, Maryland, this 30th day of April, 2018.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–09382 Filed 5–2–18; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing previously approved information collection for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within sixty (60) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW, Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202) 336–8558.

SUPPLEMENTARY INFORMATION: All mailed comments and requests for copies of the subject form should include form number OPIC–129 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *James.Bobbitt@opic.gov,* subject line OPIC–129.

Summary Form Under Review

Type of Request: Revision of currently approved information collection.

Title: Sponsor Disclosure Report.

Form Number: OPIC–129.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 500 (1 hour per form).

Number of Responses: 500 per year.

Federal Cost: $27,455 ($54.91 × 500 × 1).

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The information provided in the OPIC–129 is used by OPIC as a part of the Character Risk Due Diligence/background check procedure (similar to a commercial bank's Know Your Customer procedure) that it performs on each party that has a significant relationship (10% or more beneficial ownership, provision of significant credit support, significant managerial relationship) to the projects that OPIC finances or insures. OPIC has a robust due diligence process that includes access to electronic databases. Certain questions that can be addressed through such electronic databases have been removed from the OPIC–129 form to eliminate duplication. These search tools provide immediate results, and thus, the OPIC–129 form is only one aspect of the due diligence review. The form has also been revised to update the electronic input fields in a manner that is consistent with new programming at OPIC. The form will include limited drop-down menus tailored to the specific applicant and OPIC business line.

Dated: April 30, 2018.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2018–09397 Filed 5–2–18; 8:45 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2018–166, MC2018–147 and CP2018–211]

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 4, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

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 website (*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).:* CP2018–166; *Filing Title:* USPS Notice of Change in Prices Pursuant to Amendment to Priority Mail Contract 421; *Filing Acceptance Date:* April 26, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* May 4, 2018.

2. *Docket No(s).:* MC2018–147 and CP2018–211; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 34 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 26, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* May 4, 2018.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2018–09356 Filed 5–2–18; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33088]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 27, 2018.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April 2018. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 22, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Branch Chief, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

PNC Advantage Funds [File No. 811–07850]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to PNC Treasury Plus Money Market Fund, a series of PNC Funds, and, on March 1, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately $77,886.98 incurred in connection with the reorganization were paid by the investment adviser of the applicant and of the acquiring fund.

Filing Dates: The application was filed on April 10, 2018, and amended on April 25, 2018.

Applicant's Address: One East Pratt Street, 5th Floor, Baltimore, Maryland 21202.

Deutsche High Income Opportunities Fund, Inc. [File No. 811–21949]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 16, 2018, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $13,157 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on April 24, 2018.

Applicant's Address: 345 Park Avenue, New York, New York 10154.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–09345 Filed 5–2–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83122; File No. SR–NYSEArca–2018–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding the Natixis Loomis Sayles Short Duration Income ETF

April 27, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that, on April 16, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain changes regarding investments of the Natixis Loomis Sayles Short Duration Income ETF, which is currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E (''Managed Fund Shares''). The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares [4]: Natixis Loomis Sayles Short Duration Income ETF (''Fund''). The Shares are offered by Natixis ETF Trust (the ''Trust''), which is registered with the Commission as an open-end management investment company.[5] Natixis Advisors, L.P. (the ''Adviser'') is the investment adviser for the Fund. Loomis, Sayles & Company, L.P. is the Fund's sub-adviser (''Sub-Adviser''). ALPS Distributors, Inc. (the ''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Adviser is the Fund's administrator. State Street Bank and Trust Company (''State Street'') serves as the custodian, and transfer agent (''Transfer Agent'' or ''Custodian'') for the Fund.[6]

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600–E is similar to Commentary .03(a)(i) and (iii) to NYSE Arca s Rule 5.2–E(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not registered as a broker-dealer but each is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Natixis Loomis Sayles Short Duration Income ETF

Principal Investments

According to the Registration Statement, the Fund's investment objective is current income consistent with preservation of capital. Under normal market conditions,[8] the Fund will invest at least 80% of its net assets in ''Fixed-Income Securities'' (as described below).

The Fixed Income Securities in which the Fund may invest are the following:

- U.S. Government Securities, including U.S. Treasury Bills, U.S. Treasury Notes and Bonds, U.S. Treasury Floating Rate Notes, Treasury Inflation-Protected Securities (''TIPS''), and obligations of U.S. agencies or instrumentalities (*e.g.,* ''Ginnie Maes'', ''Fannie Maes'' and ''Freddie Macs'');
- agency and non-agency asset-backed securities (''ABS'');

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] Shares of the Fund commenced trading on the Exchange on December 28, 2017 pursuant to Commentary .01 to NYSE Arca Rule 8.600–E.

[6] The Trust is registered under the 1940 Act. On December 26, 2017, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Fund (File Nos. 333–210156 and 811–23146) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30654 (August 20, 2013) (File No. 812–13942–02) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and 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.

[8] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

• U.S. dollar-denominated foreign securities, including emerging market securities;
• Adjustable-Rate Mortgage Securities (''ARMs'');
• junior and senior loans;
• bank loans, loan participations and assignments;
• agency and non-agency mortgage-backed securities;
• collateralized mortgage obligations (''CMOs'');
• zero coupon and pay-in-kind securities;
• corporate bonds;
• Non-US government securities, supranational entities obligations issued by foreign governments, or international agencies and instrumentalities;
• inflation-linked and inflation-indexed securities;
• money market instruments; [9]
• mortgage-related securities (such as Government National Mortgage Association or Federal National Mortgage Association certificates);
• mortgage dollar rolls;
• variable and floating rate securities;
• Rule 144A securities;
• taxable municipal securities;
• step-coupon securities; and
• stripped securities.

The Fund may hold any portion of its assets in cash (U.S. dollars, foreign currencies or multinational currency units) and/or cash equivalents.[10]

Other Investments

While the Fund, under normal market conditions, will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments referenced below.

The Fund may enter into short sales of securities.

The Fund may invest in exchange-traded funds (''ETFs'') [11] and exchange-traded notes (''ETNs'').[12]

The Fund may invest in bilateral credit default swaps, bilateral interest rate swaps and bilateral standardized commodity and equity index total return swaps. The Fund may invest in the following swaps: interest rate, index, commodity, equity-linked, fixed income, credit default, credit-linked and currency exchange swaps. The Fund may invest in swaptions.

The Fund may invest in the following options: U.S. exchange-traded and over-the-counter (''OTC'') options on domestic and foreign indices, options on futures contracts, and other options.

The Fund may invest in futures, including index futures.

The Fund may invest in publicly or privately issued interests in investment pools whose underlying assets are credit default, credit-linked, interest rate, currency exchange, equity-linked or other types of swap contracts and related underlying securities or securities loan agreements.

The Fund may invest in non-exchange-traded open-end investment company securities up to the limits imposed by the 1940 Act.

With respect to any of the Fund's investments, the Fund may purchase securities on a forward commitment or when-issued or delayed delivery basis.

Use of Derivatives by the Fund

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. The Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset where advantageous and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate risk. The Fund may also use derivative instruments to enhance returns, manage portfolio duration, or manage the risk of securities price fluctuations. To limit the potential risk associated with such transactions, the Fund segregates or ''earmarks'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Creation and Redemption of Shares

According to the Registration Statement, the Fund issues and sells Shares of the Fund only in Creation Units of 100,000 Shares on a continuous basis through the Distributor at the NAV next determined after receipt of an order in proper form on any business day. The size of a Creation Unit is subject to change.

The consideration for purchase of Creation Units generally consists of ''Deposit Securities'' and the ''Cash Component'', which generally correspond pro rata, to the extent practicable, to the Fund securities, or, as permitted by the Fund, the ''Cash Deposit.'' Together, the Deposit Securities and the Cash Component or, alternatively, the Cash Deposit, constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Transfer Agent and Custodian, through the National Securities Clearing Corporation (''NSCC''), makes available on each business day, prior to the opening of the Core Trading Session on NYSE Arca (currently 9:30 a.m., Eastern Time (''E.T.'')), the identity and the required number of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information at the end of the previous business day).

The Fund may also permit the substitution of an amount of cash (a ''cash-in-lieu'' amount) to replace any Deposit Security of the Fund that is a non-deliverable instrument. The amount of cash contributed will be equivalent to the price of the instrument listed as a Deposit Security. The Fund reserves the right to permit the substitution of a ''cash in-lieu'' amount to be added to replace any Deposit Security under specified circumstances.

Procedures for Creating Creation Units

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be: (i) A ''Participating Party'' (*i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (ii) a participant of the Depository Trust Company (''DTC'') (''DTC Participant'') and must have executed an Authorized

[9] Money market instruments are short-term instruments referenced in Commentary .01 (c) to NYSE Arca Rule 8.600–E.

[10] For purposes of this filing, cash equivalents include the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600–E.

[11] For purposes of this filing, the term ''ETFs'' includes Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[12] ETNs are Index-Linked Securities as described in NYSE Arca Rule 5.2–E(j)(6).

Participant agreement with the Distributor, and accepted by the Transfer Agent, with respect to creations and redemptions of Creation Units. A Participating Party or DTC Participant who has executed an ''Authorized Participant Agreement'' is referred to as an ''Authorized Participant.''

To initiate a creation order for a Creation Unit, an Authorized Participant must submit an irrevocable order to purchase Shares in proper form to the Transfer Agent no later than 2:00 p.m., E.T. on any business day for creation of Creation Units to be effected based on the NAV of Shares of the Fund on the following business day.

Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form on a business day and only through a Participating Party or DTC Participant who has executed an Authorized Participant Agreement.

With respect to the Fund, State Street, through the NSCC, makes available immediately prior to the opening of the Core Trading Session on the NYSE Arca on each business day, the identity of the Fund's securities and/or an amount of cash that will be applicable to redemption requests received in proper form on that day. The Fund's securities received on redemption generally correspond pro rata, to the positions in the Fund's portfolio. The Fund's securities received on redemption (''Fund Securities'') will generally be identical to Deposit Securities that are applicable to creations of Creation Units.

Subject to the terms of the applicable Authorized Participant Agreement and any creation and redemption procedures adopted by the Fund and provided to all Authorized Participants, to initiate a redemption order for a Creation Unit, an Authorized Participant must submit an irrevocable order to redeem Shares in proper form to the Transfer Agent no later than 2:00 p.m., E.T. on any business day for redemption of Creation Units to be effected based on the NAV of shares of the Fund on that business day.

Unless cash only redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consists of Fund Securities—as announced on the business day of the request for a redemption order received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less the redemption transaction fee and variable fees.[13] The Fund may substitute a ''cash-in-lieu'' amount to replace any Fund Security in certain limited circumstances. The amount of cash paid out in such cases will be equivalent to the value of the instrument listed as the Fund Security. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the difference will be included in the Cash Component required to be delivered by an Authorized Participant.

Derivatives Valuation Methodology for Purposes of Determining Portfolio Indicative Value

On each business day, before commencement of trading in Fund Shares on NYSE Arca, the Fund discloses on its website the identities and quantities of the portfolio instruments and other assets held by the Fund that form the basis for the Fund's calculation of NAV at the end of the business day. The NAV of the Shares of the Fund is determined once each day the New York Stock Exchange (the ''NYSE'') is open, as of the close of its regular trading session (normally 4:00 p.m., E.T.) (''NYSE Close'').

In order to provide additional information regarding the intra-day value of Shares of the Fund, one or more major market data vendors disseminates every 15 seconds an updated Intraday Indicative Value (''IIV'') for the Fund as calculated by an information provider or market data vendor. A third party market data provider calculates the IIV for the Fund.

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Swaps may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options and swaptions may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange-traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the applicable Disclosed Portfolio includes information that market participants can use to value these positions intraday. On a daily basis, the Fund discloses the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E (c)(2) to the extent applicable.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their NAV, which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there is any significant impact to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of block-size ''Creation Units'' (as described above) in-kind.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the change described in the preceding paragraph would result in the portfolio for the Fund not meeting all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(b)(5) and Commentary .01(a)(1).

The Fund will not comply with the requirement of Commentary .01(b)(5) to NYSE Arca Rule 8.600–E that non-agency, non-government-sponsored entity and privately-issued mortgage-

[13] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.[14] Instead, the Exchange proposes that up to 30% of the weight of the Fixed Income Securities portion of the Fund's portfolio may consist of non-agency ABS and MBS. The Adviser represents that permitting limited investments in non-agency MBS and ABS, as described above, would be in the best interest of the Fund's shareholders because such investments have the potential to reduce the overall risk profile of the Fund's portfolio through diversification. In the Adviser's view, such investments would reduce the Fund's risk with respect to non-agency ABS and MBS investments by diversifying the Fund's exposure among borrowers of such debt issues. The Adviser represents that the Fund will only purchase U.S. dollar denominated non-agency ABS and MBS that are settled through DTC. In addition, by allowing the Fund to allocate up to 30% of the weight of its Fixed Income Securities investments in such issues would afford the Fund greater flexibility to invest in the most liquid available Fixed Income Securities issues, in that such issues are expected to be as liquid, or more liquid, than other possible Fund investments.

As noted above, the Fund may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities (*e.g.,* mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in such securities.[15] Investments in such equity securities will not be principal investments of the Fund.[16] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in non-exchange-traded open-end investment company securities only to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder.[17] Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(A) through (D) to Rule 8.600–E exclude application of those provisions to certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E)) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E).[18] In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the

[14] Commentary .01(b)(5) to NYSE Arca Rule 8.600–E provides that the components of the fixed income portion of a portfolio shall meet the following criteria initially and on a continuing basis: Non-agency, non-government-sponsored entity (''GSE'') and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

[15] Commentary .01 (a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6). Commentary .01(a)(1) to Rule 8.600–E (U.S. Component Stocks) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

[16] For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

[17] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder. *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

[18] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E (j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3 in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (''2008 Approval Order''). *See also,* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares). *See also,* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf.*

requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies where such funds were permitted to invest in the shares of other registered investment companies that are not ETFs or money market funds.[19] Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

The Exchange notes that, other than Commentary .01(a)(1)(A) through (E) and Commentary .01(b)(5) to Rule 8.600–E, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

Availability of Information

The Fund's website (*www.im.natixis.com/us/active-short-duration-income-etf*) includes a form of the prospectus for the Fund that may be downloaded. The Fund's website includes additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[20] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund discloses on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E (c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.[21]

On a daily basis, the Fund discloses the information required under NYSE Arca Rule 8.600–E (c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, is publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Forms N–CSR and Forms N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Securities also will be available from major market data vendors. Price information relating to unlisted preferred equity securities, Rule 144A securities, OTC options, swaps and swaptions will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Price information regarding non-exchange-traded investment company securities will be available from the applicable investment company. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, ETFs and ETNs will be available via the Consolidated Tape Association (''CTA'') high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation (''OCC'') is available via the Options Price Reporting Authority. In addition, the IIV, as defined in NYSE Arca Rule 8.600–E (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the IIV, together with the Disclosed Portfolio, may allow investors to determine an approximate value of the underlying portfolio of the Fund on a daily basis and to provide an estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Rule 8.600–E (d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of

[19] *See, e.g.,* Exchange Act Release Nos. 79053 (October 5, 2016), 81 FR 70468 (October 12, 2016) (SR–BatsBZX–2016–35) (permitting the JPMorgan Global Bond Opportunities ETF to invest in ''investment company securities that are not ETFs''); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR–BATS–2014–056) (permitting the U.S. Fixed Income Balanced Risk ETF to invest in ''exchange traded and non-exchange traded investment companies (including investment companies advised by the Adviser or its affiliates) that invest in such Fixed Income Securities'').

[20] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[21] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E. The Exchange has obtained a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA''). The Exchange is able to access from FINRA, as needed, trade information for certain Fixed Income Securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

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. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund is calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Adviser is not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures from such markets

and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The website for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca 8.600–E (d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted. In addition, as noted above, investors have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. In the aggregate, at least 90% of the weight of the Fund's holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a CSSA.

As described above, deviations from the generic requirements of Commentary .01(a) are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Adviser represents that permitting limited investments in non-agency MBS and ABS, as described above, would be in the best interest of the Fund's shareholders because such investments have the potential to reduce the overall risk profile of the Fund's portfolio. In the Adviser's view, such investments would reduce the Fund's risk with respect to non-agency ABS and MBS investments by diversifying the Fund's exposure among borrowers of such debt issues. In addition, by allowing the Fund to allocate up to 30% of the weight of its Fixed Income Securities investments in such issues would afford the Fund greater flexibility to invest in the most liquid available Fixed Income Securities issues, in that such issues are expected to be as liquid, or more liquid, than other possible Fund investments.

The Exchange also believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded open-end investment company securities. Investments in such equity securities will not be principal investments of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in non-exchange-traded open-end investment company securities only to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder. Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares. Other than Commentary .01(a)(1)(A) through (E) and Commentary .01(b)(5) to Rule 8.600–E, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively managed ETF that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an issue of Managed Fund Shares that, through permitted use of an increased level of non-agency ABS and MBS above that currently permitted by the generic listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E, will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2018–25 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2018–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2018–25 and should be submitted on or before May 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–09340 Filed 5–2–18; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83125; File No. SR–NASDAQ–2017–088]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Nasdaq Rule 4703(a) To Allow Members To Designate an Order with a RTFY or SCAN Routing Order Attribute To Activate at 7:00 a.m. ET

April 27, 2018.

I. Introduction

On August 30, 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 amend Nasdaq Rule 4703(a) relating to the times for activating an order with a RTFY or SCAN routing order attribute. The proposed rule change was published for comment in the **Federal Register** on September 18, 2017.[3] On October 31, 2017, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 13, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.[6] On December 15, 2017, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On March 14, 2018, pursuant to Section 19(b)(2) of the Act,[9] the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[10] On April 19, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change, as modified by Amendment No. 1.[11] The Commission has received no

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81579 (September 12, 2017), 82 FR 43584.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 81986, 82 FR 51453 (November 6, 2017). The Commission designated December 17, 2017 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange: (1) Modified the proposal to allow members entering an order with a RTFY or SCAN routing order attribute to designate the order to activate at a specific time during Pre-Market Hours (rather than System Hours) on the same day; (2) specified that the proposed functionality would be offered on a port level basis; (3) stated that all of the times-in-force in Nasdaq Rule 4703(a) currently apply to orders with RTFY or SCAN routing order attributes and made corresponding clarifications and corrections throughout the proposal; (4) provided additional information regarding why members might use the proposed functionality; and (5) provided additional discussion regarding members' best execution obligations and the application of the Exchange's regulatory checks associated with the proposed functionality, and reminded members of their regulatory obligations (*e.g.,* Market Access Rule, Regulation SHO) when using the proposed functionality. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2017-088/nasdaq2017088-2798107-161689.pdf*.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 82335, 82 FR 60637 (December 21, 2017).

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release No. 82871, 83 FR 12229 (March 20, 2018). The Commission designated May 16, 2018 as the date by which the Commission shall either approve or disapprove the proposed rule change.

[11] In Amendment No. 2, the Exchange: (1) Further narrowed the proposal by allowing members to designate orders with RTFY or SCAN routing order attributes to activate at 7:00 a.m. ET; (2) provided additional information regarding why members might use the proposed functionality; and (3) compared the proposed functionality to existing

comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Nasdaq Rule 4703(a) to allow members to designate a 7:00 a.m. ET activation time for an order with a RTFY or SCAN routing order attribute.

RTFY is a routing option available for an order that qualifies as a designated retail order under which orders check the system for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the system routing table.[12] If shares remain unexecuted after routing, they are posted to the Nasdaq book.[13] Once on the book, should the order subsequently be locked or crossed by another market center, the system will not route the order to the locking or crossing market center.[14] RTFY is designed to allow orders to participate in the opening, reopening, and closing process of the primary listing market for a security.[15] SCAN is a routing option under which orders check the system for available shares and simultaneously route the remaining shares to destinations on the system routing table.[16] If shares remain unexecuted after routing, they are posted on the Nasdaq book.[17] Once on the book, should the order subsequently be locked or crossed by another market center, the system will not route the order to the locking or crossing market center.[18]

Nasdaq Rule 4703(a) provides the times-in-force that may be assigned to orders entered into the system. According to Nasdaq Rule 4703(a), members specify an order's time-in-force by designating a time at which the order will become active and a time at which the order will cease to be active. All of the times-in-force currently described in Nasdaq Rule 4703(a) are applicable to orders with RTFY or SCAN routing order attributes.[19] According to the Exchange, during Pre-Market Hours,[20] members usually designate orders with RTFY or SCAN routing order attributes to activate upon entry or at 8:00 a.m. ET.[21] The Exchange now proposes to amend Nasdaq Rule 4703(a) to provide that a member entering an order with a RTFY or SCAN routing order attribute may designate the order to activate at 7:00 a.m. ET if entered prior to 7:00 a.m. ET on the same day.[22] As with the existing 8:00 a.m. ET activation time, the Exchange proposes to offer the 7:00 a.m. ET activation time on a port level basis.[23]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission notes that the proposal would provide Exchange members with an additional time for activating orders with RTFY or SCAN routing order attributes, and could facilitate the entry of these orders.[26]

The Commission notes that, as amended, the proposal would allow members to activate orders with RTFY or SCAN routing order attributes specifically at 7:00 a.m. ET. According to the Exchange, market participants have coded their systems for trading during Pre-Market Hours, such as 7:00 a.m. ET, as evidenced by trading sessions on other exchanges[27] that start at 7:00 a.m. ET.[28] The Commission believes that Exchange members may wish to activate orders with RTFY or SCAN routing order attributes at 7:00 a.m. ET to benefit from the liquidity at that time. The Commission also notes that the 7:00 a.m. ET activation time is similar to existing functionalities on certain other exchanges where orders can activate at 7:00 a.m. ET.[29]

The Exchange represents that as of the time that an order with a RTFY or SCAN routing order attribute is activated, the Exchange would subject orders that are eligible for display or execution to all of the Exchange's standard regulatory checks, as it currently does with all orders upon entry.[30] These checks include compliance with Regulation NMS, Regulation SHO, and relevant Exchange rules.[31] Moreover, the Exchange reminds its members of their regulatory obligations when submitting an order with a RTFY or SCAN routing order attribute.[32] In particular, the Exchange reminds that members must comply with the Market Access Rule, which requires, among other things, pre-trade controls and procedures that are reasonably designed to assure compliance with Exchange trading rules and Commission rules pursuant to Regulation SHO and Regulation NMS.[33] The Exchange also notes that a member's procedures must be reasonably designed to ensure compliance with the applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order is activated and becomes eligible for execution.[34]

The Commission further notes the Exchange's discussion of the best execution obligations of members

functionalities on other exchanges. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-nasdaq-2017-088/nasdaq2017088-3476253-162214.pdf*.

[12] *See* Nasdaq Rule 4758(a)(1)(A)(v)b.

[13] *See id*.

[14] *See id*.

[15] *See id*.

[16] *See* Nasdaq Rule 4758(a)(1)(A)(iv).

[17] *See id*.

[18] *See id*.

[19] *See* Amendment No. 2 at n.12.

[20] ''Pre-Market Hours'' means the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours. *See* Nasdaq Rule 4701(g). ''Market Hours'' means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). *See id*.

[21] *See* Amendment No. 2 at 5.

[22] Orders can be entered into the system from 4:00 a.m. ET until 8:00 p.m. ET. *See* Nasdaq Rule 4756(a)(3).

[23] *See* Amendment No. 2 at n.14. As a result, if, for example, a member cancels an order entered through a port set for 7:00 a.m. ET activation and wishes the order to instead activate at 8:00 a.m. ET, it must either have another port set for activation at 8:00 a.m. ET or, alternatively, enter the order at that time for immediate activation. *See id*.

[24] 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).

[25] 15 U.S.C. 78f(b)(5).

[26] The Exchange states that, should it become aware of other orders that would also benefit from this change, it would consider filing another rule change to extend the proposed activation functionality to such other orders. *See* Amendment No. 2 at 13–14.

[27] *See infra* note 29.

[28] *See* Amendment No. 2 at 7.

[29] *See* Cboe BZX Exchange, Inc. Rule 1.5(ee); Cboe BYX Exchange, Inc. Rule 1.5(ee); Cboe EDGA Exchange, Inc. Rule 1.5(ii); and Cboe EDGX Exchange, Inc. Rule 1.5(ii).

[30] *See* Amendment No. 2 at 10.

[31] *See id*.

[32] *See id*.

[33] *See id*. at 10–11.

[34] *See id*. at 11.

utilizing the proposed 7:00 a.m. ET activation time.[35] The Exchange notes that members may cancel their inactive orders with RTFY or SCAN routing order attributes at any time prior to the time the order activates, which would allow members to react to conditions that may cause them to violate their best execution obligations to their customers should the orders activate and execute.[36] The Exchange also notes that members may cancel their active orders with RTFY or SCAN routing order attributes and enter new orders at another time that the members believe will satisfy their best execution obligations.[37] The Commission notes that Exchange members' use of the proposed 7:00 a.m. ET activation time must be consistent with their best execution obligations.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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–2017–088 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2017–088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–088 and should be submitted on or before May 24, 2018.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. As noted above, in Amendment No. 2, the Exchange narrowed the proposal from allowing members to activate orders with RTFY or SCAN routing order attributes at any time during Pre-Market Hours, to specifically allowing members to activate these orders at 7:00 a.m. ET, which is similar to existing functionalities on certain other exchanges. Moreover, Amendment No. 2 provided additional explanation regarding the potential benefits of a 7:00 a.m. ET activation time. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[38] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–NASDAQ–2017–088), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–09341 Filed 5–2–18; 8:45 am]

BILLING CODE 8011–01–P

[35] *See id.* at 8–10.

[36] *See id.* at 8.

[37] *See id.*

[38] 15 U.S.C. 78s(b)(2).

[39] *Id.*

[40] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2018–0012]

Privacy Act of 1974; System of Records

AGENCY: Office of Analytics, Review, and Oversight, Social Security Administration (SSA).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act, we are issuing public notice of our intent to establish a new system of records entitled, Anti-Fraud Enterprise Solution (AFES) (60–0388), hereinafter called the AFES Record System. The AFES Record System is an agency-wide and overarching system that includes the ability to detect, prevent, and mitigate fraud in SSA's programs. The AFES Record System will collect and maintain personally identifiable information (PII) to assist in identifying suspicious or potentially fraudulent activities performed by individuals across all the agency's programs and service delivery methods. This notice publishes details of the system as set forth under the caption, **SUPPLEMENTARY INFORMATION**.

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the routine uses, which are effective June 4, 2018. We invite public comment on the routine uses or other aspects of this SORN. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. Therefore, please submit any comments by June 4, 2018.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov,* please reference docket number SSA–2018–0012. All comments we receive will be available for public inspection at the above address and we will post them to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Neil Etter, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401,

telephone: (410) 965–8028, email: *Neil.Etter@ssa.gov*.

SUPPLEMENTARY INFORMATION: We are establishing the AFES Record System to support our objectives that will ''Strengthen the Integrity of Our Programs,'' specifically to protect the public's data, provide secure online services, and increase payment accuracy. The AFES Record System will provide us with access to a single repository of data that currently resides across many different SSA systems of records. We will use the PII in the AFES Record System to employ advanced data analytics solutions to identify patterns indicative of fraud, improve the functionality of data-driven fraud activations, conduct real-time risk analysis, and integrate developing technology into our anti-fraud business processes. This solution will also provide true business intelligence to agency leadership with assistance in data-driven anti-fraud decision-making. We will use the records in the AFES Record System to detect indications of fraud in all SSA's programs and operations initiated by individuals outside of SSA or internal to SSA (*e.g.,* SSA employees).

In accordance with 5 U.S.C. 552a(r), we provided a report to OMB and Congress on this new system of records.

Dated: February 14, 2018.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

SYSTEM NAME AND NUMBER

Anti-Fraud Enterprise Solution (AFES), 60–0388.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Office of Analytics, Review, and Oversight, Office of Anti-Fraud Programs, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235.

SYSTEM MANAGER(S):

Chief Fraud Prevention Officer, Social Security Administration, Office of Analytics, Review, and Oversight, Office of Anti-Fraud Programs, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235, *dcaro.oafp.controls@ssa.gov*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in Sections 205(a) and 702(a)(5) of the Social Security Act, as amended (42 U.S.C. 405(a) and 902(a)(5)), and the Fraud Reduction and Data Analytics Act of 2015 (Pub. L. 114–186).

PURPOSE(S) OF THE SYSTEM:

The records maintained in the AFES Record System are necessary to detect, prevent, mitigate, and track the likelihood of fraudulent activity in SSA's programs and operations. We will use the AFES Record System to identify patterns of fraud and to improve data-driven fraud activations and real-time analysis. We may use the results of these data analysis activities, including fraud leads and vulnerabilities, in our fraud investigations and other activities to support program and operational improvements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers individuals who are relevant to suspicious or potentially fraudulent activities connected with Social Security programs and operations, including but not limited to the subjects of an investigation, Social Security applicants and beneficiaries, representative payees, appointed representatives, complainants, key witnesses, and current or former employees, contractors, or agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

We will collect and maintain information in connection with our review of all suspicious or potentially fraudulent activities in Social Security programs and operations. We will also collect and maintain SSA and Non-SSA breach information, including data generated internally or received from businesses with whom SSA has a relationship or government entities or partners.

The AFES Record System includes records on individuals that it obtains from other SSA systems of records and will maintain information such as:

Enumeration Information: This information may include name, Social Security number (SSN), date of birth, parent name(s), address, and place of birth.

Earnings Information: This information may include yearly earnings and quarters of coverage information.

Social Security Benefit Information: This information may include disability status, benefit payment amount, data relating to the computation, appointed representative, and representative payee.

Representative Payee Information: This information may include names, SSNs, and addresses of representative payees and relationship with the beneficiary.

Persons Conducting Business With Us Through Electronic Services: This information may include name, address, date of birth, SSN, knowledge-based authentication data, and blocked accounts.

Employee Information: This information may include personal identification number (PIN), employee name, job title, SSN about our employees, contractors, or agents.

RECORD SOURCE CATEGORIES:

We obtain information in this system from individuals (*i.e.,* the public and SSA staff), other Government agencies, and private entities. The largest record sources for the AFES Record System is information the agency collects and maintains for purposes related to other business processes that have established systems of records, such as the Master Files of SSN Holders and SSN Applications (60–0058), the Claims Folders Systems (60–0089), the Master Beneficiary Record (60–0090), the Supplemental Security Income Record and Special Veterans Benefits (60–0103), the Personal Identification Number File (60–0214), the Master Representative Payee File (60–0222), and the Central Repository of Electronic Authentication Data Master File (60–0373). The AFES Record System may pull any relevant information from any SSA system of records. For a full listing of our system of records notices that could provide information to the AFES Record System, please see the Privacy Program section of SSA's website.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We will disclose records pursuant to the following routine uses; however, we will not disclose any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC), unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To any agency, person, or entity in the course of an SSA investigation to the extent necessary to obtain or to verify information pertinent to an SSA fraud investigation.

2. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or a third party acting on the subject's behalf.

3. To the Office of the President in response to an inquiry received from that office made on behalf of, and at the request of, the subject of record or a third party acting on the subject's behalf.

4. To the Department of Justice (DOJ), a court or other tribunal, or another party before such court or tribunal, when:

(a) SSA, or any component thereof; or

(b) any SSA employee in his/her official capacity; or:

(c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines the litigation is likely to SSA or any of its components,

is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to DOJ, court or other tribunal, or another party is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

6. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for SSA, as authorized by law, and they need access to PII in SSA records in order to perform their assigned agency functions.

7. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of SSA facilities, or

(b) to assist in investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

8. To the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

9. To appropriate agencies, entities, and persons when:

(a) SSA suspects or has confirmed that there has been a breach of the system of records;

(b) SSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SSA (including its information systems, programs, and operations), the Federal Government, or national security; and

(c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. To another Federal agency or Federal entity, when SSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(a) Responding to suspected or confirmed breach; or

(b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. To the Equal Employment Opportunity Commission when requested in connection with investigation into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

12. To the Office of Personnel Management, Merit Systems Protection Board, or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigations of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be required by law.

13. To the Federal Labor Relations Authority, the Office of the Special Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator requesting information in connection with the investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

We will maintain records in this system in paper and electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

We will retrieve records by the individual's name, SSN, as well as internal transaction identifiers (*e.g.,* transaction identification for the Internet Claim application, transaction identification for an electronic online Direct Deposit change, etc.). Information from these retrieved records that matches across other agency systems of records will also create a linkage to retrieve those records, because the system is able to show key connections or overlaps based on similar information stored in different data sources at the agency.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are currently unscheduled. We will retain the records in accordance with NARA approved records schedules. In accordance with NARA rules codified at 36 CFR 1225.16, we maintain unscheduled records until NARA approves an agency-specific records schedule or publishes a corresponding General Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic and paper files containing personal identifiers in secure storage areas accessible only by our authorized employees who have a need for the information when performing their official duties. Security measures include, but are not limited to, the use of codes and profiles, personal identification number and password, and personal identification verification cards. We restrict access to specific correspondence within the system based on assigned roles and authorized users. We maintain electronic files with personal identifiers in secure storage areas. We will use audit mechanisms to record sensitive transactions as an additional measure to protect information from unauthorized disclosure or modification. We keep paper records in cabinets within secure areas, with access limited to only those employees who have an official need for access in order to perform their duties.

We annually provide our employees and contractors with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of PII. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining PII must annually sign a sanction document that acknowledges their accountability

for inappropriately accessing or disclosing such information.

RECORD ACCESS PROCEDURES:

Individuals may submit requests for information about whether this system contains a record about them by submitting a written request to the system manager at the above address, which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include: (1) A notarized statement to us to verify their identity; or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

NOTIFICATION PROCEDURES:

Same as record access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2018–09362 Filed 5–2–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 10404]

United States-Morocco Working Group on Environmental Cooperation Meeting and Public Session

AGENCY: Department of State.

ACTION: Announcement of meetings; solicitation of suggestions; invitation to public session.

SUMMARY: The Department of State is providing notice that the governments of the United States and Kingdom of Morocco (the governments) intend to hold a meeting of the United States-Morocco Working Group on Environmental Cooperation (Working Group) and a public session in Rabat, Morocco, on May 11, 2018, to discuss implementation of the Joint Statement on Environmental Cooperation (Joint Statement).

During the meetings, the governments will discuss how the United States and Morocco can work together to protect and conserve the environment, highlight past bilateral environmental cooperation, review activities under the 2014–2017 Plan of Action, and approve a 2018–2021 Plan of Action.

The Department of State invites members of the public to submit written suggestions on items to include on the meeting agenda and in the 2018–2021 Plan of Action. The Department of State also invites interested persons to attend a public session where the public will have the opportunity to ask about implementation of the Joint Statement.

DATES: The public session will be held on May 11, 2018, in Rabat, Morocco. Suggestions on the meeting agenda and/or the 2018–2021 Plan of Action should be provided no later than May 8, 2018, to facilitate consideration.

ADDRESSES: Those interested in attending the public session should email Eloise Canfield at *CanfieldME@state.gov* to find out the time and location of the session. Suggestions on the meeting agenda and/or the 2018–2021 Plan of Action should be emailed to *CanfieldME@state.gov* or faxed to Eloise Canfield at (202) 647–5947, with the subject line ''United States-Morocco Environmental Cooperation.''

FOR FURTHER INFORMATION CONTACT: Eloise Canfield, (202) 647–4750 or *CanfieldME@state.gov*.

SUPPLEMENTARY INFORMATION: In the Joint Statement, the governments of the United States and Morocco indicate their intent ''to pursue efforts to enhance bilateral environmental cooperation . . . .'' In paragraph 5 of the Joint Statement, the governments established the Working Group to coordinate and review environmental cooperation activities. As envisioned in the Joint Statement, the Working Group develops Plans of Action, reviews and assesses cooperative environmental activities pursuant to the Plan of Action, recommends ways to improve such cooperation, and undertakes such other activities as may seem appropriate to the governments.

Through this notice, the United States is soliciting the views of the public with respect to the 2018–2021 Plan of Action. Members of the public, including NGOs, educational institutions, private sector enterprises, and all other interested persons are invited to submit written suggestions regarding items for inclusion in the meeting agendas or in the 2018–2021 Plan of Action. Please include your full name and identify any organization or group you represent. We encourage submitters to refer to:

- United States-Morocco Joint Statement on Environmental Cooperation;
- 2014–2017 Plan of Action Pursuant to the United States-Morocco Joint Statement on Environmental Cooperation;

These documents are available at: *http://www.state.gov/e/oes/eqt/trade/morocco/index.htm*.

Brian P. Doherty,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2018–09378 Filed 5–2–18; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1256]

Boston and Maine Corporation & Springfield Terminal Railway Company—Adverse Discontinuance of Operating Authority—Milford-Bennington Railroad Company, Inc.

On April 13, 2018, Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively, Pan Am) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (the Board) authorize the third-party, or ''adverse,'' discontinuance of operating authority held by Milford-Bennington Railroad Company, Inc. (MBR) over approximately 5.36 miles of rail line on the Hillsborough Branch from milepost 11.00 to milepost 16.36 in southern New Hampshire (the Line). The Line traverses United States Postal Service Zip Codes 03055 and 03086.

According to Pan Am, MBR, a Class III rail carrier, has been operating over the Line pursuant to a trackage rights agreement dated June 22, 1992, which Pan Am claims expired in 2004.[1] Pan Am asks that the Board terminate MBR's operating authority so that Pan Am may repossess its property, after which Pan Am states it would provide service over the Line.

According to Pan Am, the Line does not contain federally granted rights-of-way. Any documentation in Pan Am's possession will be made available promptly to those requesting it. Pan Am's entire case-in-chief for adverse discontinuance was filed with the application.

In a decision served June 23, 2017, Pan Am was granted exemptions from several statutory provisions as well as waivers of certain Board regulations that were not relevant to its adverse discontinuance application or that sought information not available to Pan Am.

Any interested person may file written comments or protests (including protestant's entire opposition case) concerning the proposed adverse discontinuance by May 29, 2018. Persons who may oppose the proposed adverse discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR 1152.25. Pan Am's reply is due by June 12, 2018.

All filings in response to this notice must refer to Docket No. AB 1256 and must be sent to: (1) Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001; and (2) Robert B. Burns, 1700 Iron Horse Park, North Billerica, MA 01862.

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's ''*www.stb.gov*'' website, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR pt. 1152, every document filed with the Board must be served on all parties to this adverse discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full discontinuance regulations at 49 CFR pt. 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our website at ''*WWW.STB.GOV*.''

Decided: April 30, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2018–09398 Filed 5–2–18; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Milford-Bennington R.R.—Trackage Rights Exemption—Boston & Me. Corp.,* FD 32103 (ICC served July 9, 1992).

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1264X]

Kasgro Rail Corp.—Discontinuance of Service Exemption—in Lawrence County, Pa.

On April 13, 2018, Kasgro Rail Corp. (Kasgro) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue its lease operations over approximately four miles of rail line owned by EASX Corporation (EASX) in Lawrence County, Pa. (the Line).

The Line consists of three segments. The New Castle Branch begins at New Castle Monumented Base Line (MBL), at Survey Station 10+00, opposite the former Pittsburgh and Lake Erie Railroad's (P&LE) Main Line MBL Survey Station 2580+10, and extends in a generally northeasterly direction to the former P&LE Valuation Station 146+10. The Big Run Branch begins at P&LE New Castle Branch Baseline of Survey, at Survey Station 84+44, and extends in a generally southwesterly direction to a connection with CSX Transportation, Inc. (CSXT). The Sample Spur begins at Valuation Station 2+00 off of CSXT's main line between Cumberland, Md., and Willard, Ohio, and continues in a generally northward direction to Valuation Station 40+75.7, where it connects with New Castle Industrial Railroad (NCIR), formerly known as ISS Rail, Inc. (ISS). The Line is located entirely within the New Castle station. The Line traverses United States Postal Service Zip Codes 16101 and 16102.

Kasgro states that, based on inquiry of EASX and information in Kasgro's possession, the Line does not contain any federally granted rights-of-way. Kasgro states that any documentation in its possession will be made available to those requesting it.

Kasgro states that it acquired authority to lease the Line in June 2000.[1] During that time, ISS and ISS's successor, NCIR, operated over the Line, as required by the lease. On April 3, 2018, Kasgro gave EASX written notice of its intent to exit the lease 30 days after the STB authorizes Kasgro to discontinue service. Kasgro states that following Kasgro's proposed discontinuance, NCIR will continue to operate the Line for EASX.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 1, 2018.

Because this is a discontinuance proceeding and not an abandonment proceeding, trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during abandonment, this discontinuance does not require an environmental review. *See* 49 CFR 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than August 13, 2018, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.[2] Each OFA must be accompanied by a $1,800 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB 1264 and must be sent to: (1) Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001; and (2) Jeffrey O. Moreno, Thompson Hine LLP, 1919 M Street NW, Suite 700, Washington, DC 20036. Replies to this petition are due on or before May 23, 2018.

[1] *See Kasgro Rail Corp.—Lease & Operation Exemption—EASX Corp. & Rail Servs. Corp.,* FD 33882 (STB served June 22, 2000).

[2] The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly-available information. *See Offers of Financial Assistance,* EP 729 (STB served June 29, 2017); 82 FR 30,997 (July 5, 2017).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR pt. 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our website at *WWW.STB.GOV*.

Decided: April 30, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2018–09399 Filed 5–2–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0041]

Petition for Waiver of Compliance

Under part 211 of Title 49 of the Code of Federal Regulations (CFR), this provides the public notice that on April 18, 2018, the Port Authority Trans-Hudson Corporation (PATH) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 214. FRA assigned the petition docket number FRA–2018–0041.

PATH is requesting relief from the definition of ''fouling a track'' found in 49 CFR 214.7 at certain locations within PATH's tunnel system if certain conditions are met. PATH seeks the waiver to allow tunnel bench walls to be considered a ''place of safety'' under § 214.329, *Train Approach Warning,* for the safety and efficiency of roadway maintenance procedures at that those locations. If approved, when train approach warning or foul time is used as the method of protection, roadway workers may move to a previously arranged place of safety designated as a ''Clearance Area.'' Due to track and physical structure configurations, the designated ''Clearance Area'' can be less than the required four feet from the near running rail, yet still provides a place of safety, protecting roadway workers from the risk of being struck by moving trains or on-track equipment. PATH states safety will be improved by reducing the distance roadway workers must walk to reach a compliant place of safety upon receiving warning of an approaching train. PATH also contends roadway maintenance procedures will be more efficient by increasing the number of clearing locations, thereby reducing time spent moving to and from places of safety.

PATH is a rapid transit system, with 13.8 route miles, of which 7.4 miles are composed of an underground tunnel system that operates between the states of New York and New Jersey. The current tunnel system was built between 1873 and 1901. As such, the physical structure and track configurations within the tunnel system provide many locations where it is physically impossible to clear outside four feet of the near rail. PATH explains that the historical use and safety record of bench walls as a place of clearance for close to half a century without incident show that, under certain conditions, they can be used as a place of safety within the four-foot fouling envelope.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 18, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy*. See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–09401 Filed 5–2–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0015]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 13, 2018, Ritron, Inc. (Ritron) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 232.409(d). FRA assigned the petition Docket Number FRA–2009–0015.

Ritron is seeking to extend its waiver of compliance from 49 CFR 232.409(d) for three models of its two-way transceiver radios used for the link modules inside Head-of-Train (HOT) and End-of-Train (EOT) devices. These three models are DTX–445, DTX–454, and DTX–460. These models use a master reference oscillator to determine the frequency stability of the transmitted signal. The actual transmitted signal is phase-locked to this master oscillator by a phase-locked loop. This self-calibrating procedure eliminates the need for yearly re-calibrations. Ritron states that if the radio is operating, it is within specifications. Ritron originally received a waiver of compliance on July 21, 2010. Ritron received an updated waiver, to add another radio to that included in the original request, on September 4, 2013.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 18, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018–09400 Filed 5–2–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of a person whose property and interests in property have been unblocked and removed from the list of Specially Designated Nationals and Blocked Persons. Additionally, OFAC is publishing an update to the identifying information of a person currently included in the list of Specially Designated Nationals and Blocked Persons.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*http://www.treasury.gov/ofac*).

Notice of OFAC Actions

On April 26, 2018, OFAC determined that the property and interests in property of the following person are unblocked and removed from the SDN List under the relevant sanctions authority listed below.

Entity

1. ENVIGADO FUTBOL CLUB S.A. (a.k.a. ENVIGADO F.C.), Carrera 48 No. 46 Sur 150, Envigado, Antioquia, Colombia; website *www.envigadofutbolclub.net;* NIT # 900470848–9 (Colombia) [SDNTK].

Additionally, on April 26, 2018, OFAC updated the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

Individual

1. UPEGUI GALLEGO, Juan Pablo; DOB 16 Oct 1980; POB Itagui, Antioquia, Colombia; citizen Colombia; Cedula No. 3391839 (Colombia) (individual) [SDNTK] (Linked To: ENFARRADOS COMPANY S.A.S.; Linked To: CENTRO DE DIAGNOSTICO AUTOMOTOR DEL SUR LTDA.).

Dated: April 26, 2018.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2018–09386 Filed 5–2–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Plasterers & Cement Masons Local No. 94 Pension Fund, a multiemployer pension plan, has submitted an application to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Plasterers & Cement Masons Local No. 94 Pension Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Plasterers & Cement Masons Local No. 94 Pension Fund.

DATES: Comments must be received by June 18, 2018.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW,

Room 1224, Washington, DC 20220, Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Plasterers & Cement Masons Local No. 94 Pension Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On March 30, 2018, the Board of Trustees of the Plasterers & Cement Masons Local No. 94 Pension Fund submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx*. Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Plasterers & Cement Masons Local No. 94 Pension Fund application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Plasterers & Cement Masons Local No. 94 Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: April 19, 2018.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2018–09421 Filed 4–30–18; 4:15 pm]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 83 Thursday,
No. 86 May 3, 2018

Part II

The President

Federal Register
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Thursday, May 3, 2018

Presidential Documents

Title 3—

The President

Proclamation 9731 of April 30, 2018

Jewish American Heritage Month, 2018

By the President of the United States of America

A Proclamation

During Jewish American Heritage Month, we celebrate the profound contributions that the Jewish faith and its traditions have had on our Nation. Two hundred years ago, in April 1818, Mordecai Noah delivered his famous discourse before the members of America's first synagogue, Congregation Shearith Israel, upon the consecration of their new house of worship. Reflecting on Jewish history as well as on the unique rights and privileges afforded to American Jews, Noah proclaimed that, ''for the first time in eighteen centuries, it may be said that the Jew feels he was born equal, and is entitled to equal protection; he can now breathe freely.''

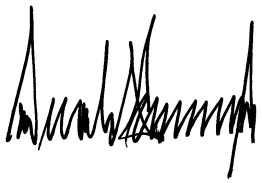
Jewish Americans have helped guide the moral character of our Nation. They have maintained a strong commitment to engage deeply in American society while also preserving their historic values and traditions. Their passion for social justice and showing kindness to strangers is rooted in the beliefs that God created all people in his image and that we all deserve dignity and peace. These beliefs have inspired Jewish Americans to build mutual-support societies, hospitals, and educational institutions that have enabled them and their fellow Americans to advance American society. Jewish Americans marched for civil rights in Selma and fought for the freedom of their brethren behind the Iron Curtain. Through their actions, they have made the world a better place.

The contributions of the Jewish people to American society are innumerable, strengthening our Nation and making it more prosperous. American Jews have proudly served our country in all branches of government, from local to Federal, and they have defended our freedom while serving in the United States Armed Forces. The indelible marks that American Jews have left on literature, music, cinema, and the arts have enriched the American soul. In their enduring tradition of generosity, Jewish Americans have established some of the largest philanthropic and volunteer networks in the Nation, providing humanitarian aid and social services to those in need at home and abroad, acting as a ''light unto the nations.'' Universities and other institutions around the country proudly display Nobel prizes won by Jewish Americans in the fields of medicine, chemistry, physics, and economics.

In reaction to Mordecai Noah's 1818 discourse, Thomas Jefferson wrote that American laws protect ''our religious as they do our civil rights by putting all on an equal footing.'' The American Jewish community is a shining example of how enshrining freedom of religion and protecting the rights of minorities can strengthen a nation. Through their rich culture and heritage, the Jewish people have triumphed over adversity and enhanced our country. For this and many other reasons, the American Jewish community is deserving of our respect, recognition, and gratitude.

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 2018 as Jewish American Heritage Month. I call upon all Americans to celebrate the heritage and contributions of American Jews and to observe this month with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2018–09587
Filed 5–2–18; 11:15 am]
Billing code 3295–F8–P

Presidential Documents

Proclamation 9732 of April 30, 2018

Law Day, U.S.A., 2018

By the President of the United States of America

A Proclamation

On Law Day, we celebrate our Nation's heritage of liberty, justice, and equality under the law. This heritage is embodied most powerfully in our Constitution, the longest surviving document of its kind. The Constitution established a unique structure of government that has ensured to our country the blessings of liberty through law for nearly 229 years.

The Framers of our Constitution created a government with distinct and independent branches—the Legislative, the Executive, and the Judicial—because they recognized the risks of concentrating power in one authority. As James Madison wrote, ''the accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.'' By separating the powers of government into three co-equal branches and giving each branch certain powers to check the others, the Constitution provides a framework in which the rule of law has flourished.

The importance of the rule of law can be seen throughout our Nation's history. This year marks the 150th anniversary of the ratification of the Fourteenth Amendment to our Constitution. The Fourteenth Amendment prohibits States from denying persons the equal protection of the laws or depriving them of life, liberty, or property without due process of law. The commitment to the rule of law that led the country to ratify that Amendment was no less powerful than the commitment to the rule of law that led the country to ratify the original Constitution.

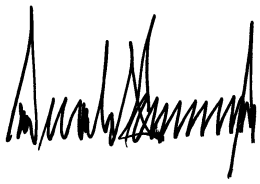
That commitment to the rule of law lives on today. It drives the debates we see around the country about the growth of the administrative state and regulatory authority, and about the unfortunate trend of district court rulings that exceed traditional limits on the judicial power. We also see that commitment in the people's demand that their representatives comply with the Constitution, and in the Representatives and Senators themselves who take seriously their oaths to support and defend the Constitution of the United States.

President Dwight D. Eisenhower first commemorated Law Day in 1958 to celebrate our Nation's roots in the principles of liberty and guaranteed fundamental rights of individual citizens under the law. Law Day recognizes that we govern ourselves in accordance with the rule of law rather according to the whims of an elite few or the dictates of collective will. Through law, we have ensured liberty. We should not, and do not, take that success for granted. On this 60th annual observance of Law Day, let us rededicate ourselves to the rule of law as the best means to secure, as the Preamble to our Constitution so wisely states, ''the Blessings of Liberty to ourselves and our Posterity.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2018, as Law Day, U.S.A. I urge all Americans, including government officials, to observe this day by reflecting upon the importance of the rule of law in our Nation and displaying the flag of the United States in support of this national observance; and I especially urge the

legal profession, the press, and the radio, television, and media industries to promote and to participate in the observance of this day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



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Federal Register

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FEDERAL REGISTER PAGES AND DATE, MAY

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List May 2, 2018

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