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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA-2017-0034]

RIN 0960-A116

Removal of Special Payments at Age 72

AGENCY: Social Security Administration.
ACTION: Final rule.

SUMMARY: We are removing from the Code of Federal Regulations our “Special Payments at Age 72” rules because they are obsolete. We are removing these rules in accordance with the requirements of Executive Order (E.O.) 13777.

DATES: Effective May 10, 2018.

FOR FURTHER INFORMATION CONTACT: Linda Appler, Social Security Administration, 410-966-6760 or Regulations@ssa.gov. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: We are removing our rules, “Special Payments at Age 72,” in accordance with E.O. 13777 (“Enforcing the Regulatory Reform Agenda”).¹ The Executive Order requires agencies to identify rules that, among other things, are outdated or unnecessary, and repeal, replace, or modify them, consistent with applicable law. These rules, found in sections 404.380-404.384 of our rules, implement section 228 of the Social Security Act (Act). Congress enacted section 228 of the Act in 1966 to provide a special payment to individuals who had little or no chance to become fully insured for regular Social Security benefits during their working years because they were too old when the Social Security program

began, or when Social Security coverage was first extended to their jobs.² Congress amended section 228 in 1990 to prohibit entitlement to special age 72 payments for individuals who attained age 72 after 1971.³ We amended our rules in 1992 to reflect this change in the Act.⁴

We are removing these rules from the CFR because they are obsolete and no longer necessary. We are also revising other sections in the CFR to remove references to special age 72 payments. There are no individuals who currently receive special age 72 payments, and no individuals will become entitled to these payments in the future.

We are also rescinding several Social Security Rulings (SSR) that relate to special age 72 payments because those SSRs are also obsolete. We are rescinding, under a separate Notice published concurrently with this final rule, the following SSRs:

- SSR 67-28: Section 228(c)(1) and (h)(2).—Special Age 72 Payments For Uninsured Individuals—Reduction Because Of Eligibility For Governmental Pension;
- SSR 68-13: Sections 228(c)(1) and 228(h)(2).—Special Age 72 Payments—Governmental Pension System—Teachers’ Retirement Fund;
- SSR 68-36: Section 228(c) and 228(h)(2).—Special Age 72 Payment—Reduction Because Of Eligibility For Veterans’ Administration Pension;
- SSR 68-37: Section 228(c) and (h).—Special Age 72 Payment—Eligibility For Teacher’s Annuity Purchased From Personal Funds Not Cause For Offset;
- SSR 68-52: Sections 228(c)(1), 228(h)(2) and (3).—Special Age 72 Payments For Uninsured Individual—Reduction Due To Commutation Of Periodic Pension;
- SSR 68-78: Sections 228(c)(1) and (h)(2).—Special Age 72 Payments For Uninsured Individuals—Reduction Because Of Eligibility For Governmental Pension;
- SSR 70-23c: Section 228(c).—Special Age 72 Payments—Effect On Claimant’s Eligibility Where Application Not Filed By Spouse Who Is Eligible For Periodic Benefit Under Governmental Pension System;

- SSR 72-27: Sections 228 (of Social Security Act) and 103 of Social Security Amendments of 1965.—Special Age 72 and Hospital Insurance Benefits—5 Years Continuous Residence Requirement; and

- SSR 74-27c: Sections 205(g), 228(a) and (e) (42 U.S.C. 405(g), 428(a), and 428(e)).—Special Age 72 Payments—Application and Residence Requirements—Constitutionally [*sic*] as to Puerto Rican Residents.

Regulatory Procedures

Justification for Issuing a Final Rule Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We find that there is good cause under 5 U.S.C. 553(b)(B) to issue this regulatory change as a final rule without prior public comment. We find that prior public comment is unnecessary because this final rule only removes from the Code of Federal Regulations obsolete and unnecessary rules that do not affect any living beneficiaries.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of this rule provided for in 5 U.S.C. 553(d)(3). For the reasons stated above, we find it unnecessary to delay the effective date of the changes we are making in this final rule. Accordingly, we are making them effective upon publication.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563. Thus, OMB did not review the final rule.

² Section 302 of Public Law 89-368, 80 Stat. 38.

³ Section 5114 of Public Law 101-508, 104 Stat. 1388, 1388-273.

⁴ 57 FR 21598.

¹ 82 FR 12285.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because the rule affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Nancy A. Berryhill,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we amend 20 CFR chapter III part 404, Subparts A, B, C, D, E, and G as set forth below:

PART 404—FEDERAL OLD AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)**Subpart A—Introduction, General Provisions and Definitions**

■ 1. The authority citation for subpart A of part 404 continues to read as follows:

Authority: Secs. 203, 205(a), 216(j), and 702(a)(5) of the Social Security Act (42 U.S.C. 403, 405(a), 416(j), and 902(a)(5)) and 48 U.S.C. 1801.

■ 2. Amend § 404.2 by revising paragraph (c)(2) to read as follows:

§ 404.2 General definitions and use of terms.

* * * * *

(c) * * *

(2) *Benefit* means an old-age insurance benefit, disability insurance benefit, wife's insurance benefit, husband's insurance benefit, child's insurance benefit, widow's insurance benefit, widower's insurance benefit, mother's insurance benefit, father's insurance benefit, or parent's insurance benefit under Title II of the Act. (Lump sums, which are death payments under title II of the Act, are excluded from the term benefit as defined in this part to permit greater clarity in the regulations.)

* * * * *

Subpart B—Insured Status and Quarters of Coverage

■ 3. The authority citation for subpart B of part 404 continues to read as follows:

Authority: Secs. 205(a), 212, 213, 214, 216, 217, 223, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 412, 413, 414, 416, 417, 423, and 902(a)(5)).

■ 4. Amend § 404.110 by revising paragraph (d)(1)(ii) to read as follows:

§ 404.110 How we determine fully insured status.

* * * * *

(d) * * *

(1) * * *

(ii) If you file an application in June 1992 or later and you are not entitled to a benefit under section 227 of the Act in the month the application is made, we may consider you to have at least one QC before 1951 if you have \$400 or more total wages before 1951, as defined in paragraph (d)(2) of this section, provided that the number of QCs credited to you under this paragraph plus the number of QCs credited to you for periods after 1950 make you fully insured.

* * * * *

Subpart C—Computing Primary Insurance Amounts

■ 5. The authority citation for subpart C of part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(a), 405(a), 415, and 902(a)(5)).

§ 404.271 [Amended]

■ 6. Amend § 404.271 by removing paragraph (a) and redesignating paragraphs (b) through (d) as paragraphs (a) through (c).

■ 7. Amend § 404.278 by revising paragraph (b)(1) to read as follows:

§ 404.278 Additional cost-of-living increase.

* * * * *

(b) * * *

(1) To compute the additional increase for all individuals and for maximum benefits payable to a family, we begin with the year in which the insured individual became eligible for old-age or disability benefits to which he or she is currently entitled, or died before becoming eligible.

* * * * *

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

■ 8. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, and 902(a)(5)).

■ 9. Amend § 404.301 by revising paragraphs (b) and (c) and removing paragraph (d).

The revisions read as follows:

§ 404.301 Introduction.

* * * * *

(b) *For a worker's dependents*, benefits for a worker's wife, divorced wife, husband, divorced husband, and child; and

(c) *For a worker's survivors*, benefits for a worker's widow, widower, divorced wife, child, and parent, and a lump-sum death payment.

■ 10. Amend § 404.304 by revising paragraph (e) as follows:

§ 404.304 What are the general rules on benefit amounts?

* * * * *

(e) *Government pension offset.* If you are entitled to wife's, husband's, widow's, widower's, mother's, or father's benefits and receive a Government pension for work that was not covered under Social Security, your monthly benefits may be reduced because of that pension. For more information about this, see § 404.408a, which covers reductions for Government pensions.

* * * * *

§§ 404.380 through 404.384 [Removed and Reserved]

■ 11. Remove the undesignated center heading, "Special Payments at Age 72," and remove and reserve §§ 404.380 through 404.384.

Subpart E—Deductions; Reductions; and Nonpayments of Benefits

■ 12. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 424a, 425, 902(a)(5), and 1320a-8a); 48 U.S.C. 1801.

■ 13. Amend § 404.401 by revising the introductory text to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

Under certain conditions, the amount of a monthly insurance benefit or the lump-sum death payment as calculated under the pertinent provisions of sections 202 and 203 of the Act (including reduction for age under

section 202(q) of a monthly benefit must be increased or decreased to determine the amount to be actually paid to a beneficiary. Increases in the amount of a monthly benefit or lump-sum death payment are based upon recomputation and recalculations of the primary insurance amount (see subpart C of this part). A decrease in the amount of a monthly benefit or lump-sum death payment is required in the following instances:

* * * * *

■ 14. Amend § 404.460 by revising paragraph (a) introductory text to read as follows:

§ 404.460 Nonpayment of monthly benefits to aliens outside the United States.

(a) *Nonpayment of monthly benefits to aliens outside the United States more than 6 months.* Except as described in paragraph (b) and subject to the limitations in paragraph (c) of this section after December 1956 no monthly benefit may be paid to any individual who is not a citizen or national of the United States, for any month after the sixth consecutive calendar month during all of which he is outside the United States, and before the first calendar month for all of which he is in the United States after such absence.

* * * * *

Subpart G—Filing of Applications and Other Forms

■ 15. The authority citation for subpart G of part 404 is revised to read as follows:

Authority: Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

■ 16. Amend § 404.620 by revising paragraph (a) introductory text and removing and reserving paragraph (b).

The revision reads as follows:

§ 404.620 Filing before the first month you meet the requirements for benefits.

(a) *General rule.* If you file an application for benefits before the first month you meet all the other requirements for entitlement, the application will remain in effect until we make a final determination on your application unless there is an administrative law judge hearing decision on your application. If there is an administrative law judge hearing decision, your application will remain in effect until the administrative law judge hearing decision is issued.

* * * * *

§ 404.621 [Amended]

■ 17. Amend § 404.621 by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

[FR Doc. 2018–09910 Filed 5–9–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 710

RIN 2125–AF77

Right-of-Way and Real Estate; Correction

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Correcting amendment.

SUMMARY: This rule makes a technical correction to the regulations concerning right-of-way and real estate. The amendment contained herein makes no substantive change to the FHWA regulations, policies, or procedures. This rule updates the language to move a misplaced word.

DATES: This rule is effective June 11, 2018.

FOR FURTHER INFORMATION CONTACT:

Arnold Feldman, Office of Real Estate Services, (202) 366–2028, Arnold.Feldman@dot.gov; or Hannah Needleman, Office of the Chief Counsel, (202) 366–1345, Hannah.Needleman@dot.gov; Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

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Background

This rule makes a technical correction to the regulations that govern Direct Federal Acquisition to correct a misplaced word in the first sentence of 23 CFR 710.603(a). The preamble to the Final Rule (81 FR 57716, August 23, 2016) discusses this sentence and makes clear that no changes would be made to the sentence proposed in the NPRM (79 FR 69998, November 24, 2014). However, the regulatory text adopted

switches the order of the words in the sentence. This action corrects the regulatory text to reduce confusion and reflect the Agency's intended language. Specifically, the word “not” is relocated so that the current relevant portion of language is changed from “[t]he provisions of this paragraph may not be applied to any real property that is owned by the United States” to read “[t]he provisions of this paragraph may be applied to any real property that is not owned by the United States.”

Rulemaking Analyses and Notice

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The FHWA finds that notice and comment for this rule is unnecessary and contrary to the public interest because it will have no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice. The FHWA does not anticipate receiving meaningful comments on it. States, local governments, and their consultants rely upon the regulations corrected by this action. This correction will reduce confusion for these entities and should not be unnecessarily delayed. Accordingly, for the reasons listed above, the agencies find good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. This rule only entails a minor correction that will not in any way alter the regulatory effect of 23 CFR part 710. Thus, this final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This action complies with E.O.s 12866, 13563, and 13771 to improve regulation.

The FHWA considers this proposed rule to be an E.O. 13771 deregulatory action because it is intended to reduce confusion and reflect the Agency's intended language.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) FHWA has evaluated the effects of this action on small entities and have determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule will not make any substantive changes to our regulations or in the way that our regulations affect small entities; it merely corrects technical errors. For this reason, FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not impose any requirements on State, local, or Tribal governments, or the private sector and, thus, will not require those entities to expend any funds.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

This action does not create any new information collection requirements for which a Paperwork Reduction Act submission to the Office of Management and Budget would be needed under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and concluded that this rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian Tribal government; and will not preempt Tribal law. There are no requirements set forth in this rule that directly affect one or more Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Under Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, this final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory

action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda twice each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 710

Grant programs—transportation, Highways and roads, Real property acquisition, Reporting and recordkeeping requirements, Rights-of-way.

Issued on: May 3, 2018.

Brandye L. Hendrickson,
Acting Administrator.

In consideration of the foregoing, 23 CFR part 710 is amended as set forth below.

PART 710—RIGHT-OF-WAY AND REAL ESTATE

■ 1. The authority citation for part 710 continues to read as follows:

Authority: Secs. 1302 and 1321, Pub. L. 112–141, 126 Stat. 405. Sec. 1307, Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 2 CFR 200.311; 49 CFR 1.48(b) and (cc), parts 21 and 24; 23 CFR 1.32.

■ 2. Amend § 710.603 by revising the first sentence of paragraph (a) to read as follows:

§ 710.603 Direct Federal acquisition.

(a) The provisions of this paragraph may be applied to any real property that is not owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense Access Road project under 23 U.S.C. 210, if the SDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness.

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[FR Doc. 2018–09983 Filed 5–9–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0392]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow participants from the AMGEN Tour of California to cross the drawspan safely and without interruption. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 10 a.m. through 2 p.m. on May 19, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0392, is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge over the Sacramento River, mile 59.0, at Sacramento, CA. The drawbridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 10 a.m. through 10:30 a.m. and from 1 p.m. through 2 p.m. on May 19, 2018, to allow the participants from the AMGEN Tour of California to cross the drawspan safely and without interruption. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised. Vessels able to pass through the bridge in the closed position may do so at any time. In the event of an emergency, the draw can open on signal if at least one-hour notice is given to the bridge operator. There are no immediate alternate routes for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any

impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 3, 2018.

Carl T. Hausner,
District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2018–09938 Filed 5–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0393]

Drawbridge Operation Regulation; Sacramento River, Isleton, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Isleton Drawbridge across the Sacramento River, mile 18.7, at Isleton, CA. The deviation is necessary to allow participants from the AMGEN Tour of California to cross the drawspan safely and without interruption. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 12 p.m. through 1 p.m. on May 17, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0393, is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Isleton Drawbridge, mile 18.7, over the Sacramento River, at Isleton, CA. The drawbridge navigation span provides a vertical clearance of 15 feet above Mean High Water in the closed-to-navigation position. The draw

operates as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 12 p.m. through 1 p.m. on May 17, 2018, to allow the participants from the AMGEN Tour of California to cross the drawspan safely and without interruption. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 3, 2018.

Carl T. Hausner,
District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2018–09937 Filed 5–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0289]

Drawbridge Operation Regulation; Reynolds Channel, Nassau County, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Long Beach Bridge across Reynolds Channel, mile 4.7, at Nassau County, New York. This deviation is necessary in order to facilitate the “Annual Fireworks Display” and allows the bridge to remain in the closed position.

DATES: This deviation is effective from 9:30 p.m. July 6, 2018 to 10:30 p.m. on July 8, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0289, is available at <http://www.regulations.gov>. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Stephanie Lopez, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 212–514–4335, email Stephanie.E.Lopez@uscg.mil.

SUPPLEMENTARY INFORMATION: The Bridge owner, Nassau County Department of Public Works, requested this temporary deviation from the normal operating schedule to facilitate the “Annual Fireworks Display.”

The Long Beach Bridge across Reynolds Channel, mile 4.7, has a vertical clearance of 20 feet at mean high water and 24 feet at mean low water in the closed position. The existing drawbridge operating regulation is listed at 33 CFR 117.799(g).

The temporary deviation will allow the Long Beach Bridge to remain closed for one hour from 9:30 p.m. to 10:30 p.m. on July 6, 2018. Reynolds Channel is transited by seasonal recreational vessels and commercial vessels. Coordination with Coast Guard Sector Long Island Sound has indicated no mariner objections to the proposed short-term closure of the draw.

Vessels that can pass under the bridge without an opening may do so at all times. The bridge will be able to open for emergencies. There is no alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 4, 2018.

Christopher J. Bisignano,
Supervisory Bridge Management Specialist,
First Coast Guard District.

[FR Doc. 2018–09942 Filed 5–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0422]

RIN 1625–AA00

Safety Zone; Ohio River Mile Marker 27.8 to Mile Marker 28.2, Vanport, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River from mile marker 27.8 to mile marker 28.2 near the Vanport Highway Bridge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a cargo movement near the Vanport Highway Bridge in Vanport, PA. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh or a designated representative.

DATES: This rule is effective without actual notice from May 10, 2018 until 6 p.m. on May 11, 2018. For the purposes of enforcement, actual notice will be used from 8 a.m. on May 6, 2018 until May 10, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2018–0422 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 Petty Officer Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email Jennifer.L.Haggins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Pittsburgh
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On May 3, 2018, Bechtel notified the Coast Guard that a cargo movement in the vicinity of the Vanport Highway

Bridge could create potential hazards for the bridge’s structural integrity. 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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We did not receive notice of this cargo operation until May 3, 2018. This safety zone must be established by May 6, 2018, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the safety zone until after the date of the cargo operation and compromise public safety.

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 and contrary to the public interest because immediate action is needed to protect the public and vessels from the potential safety hazards associated with the cargo movement operation.

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 Marine Safety Unit Pittsburgh (COTP) has determined that potential hazards associated with a cargo movement operation that will take place during the week of May 6, 2018 will be a safety concern for anyone within a half-mile stretch of the Ohio River. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters before, during, and after the cargo movement.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. on May 6, 2018 through 6 p.m. on May 11, 2018 for all navigable waters of the Ohio River from mile marker 27.8 to mile marker 28.2. Entry into this safety zone during the enforcement period is prohibited, unless authorized by the COTP or a designated representative. Subject to the cargo delivery intervals and potential inclement weather, the period of

enforcement will be 30 minutes prior to, during, and 1 hour after any cargo movement near the Vanport Highway Bridge. The Coast Guard was informed that the operation would take place during daylight hours only and last approximately 4 hours. A safety vessel will coordinate all vessel traffic during the enforcement period. The COTP or a designated representative will inform the public through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), and/or Marine Safety Information Broadcasts (MSIBs), or through other means of public notice as appropriate at least 3 hours in advance of the enforcement period. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during cargo movement operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Marine Safety Unit Pittsburgh. They may be contacted on VHF-FM Channel 16 or 67. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the 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, location, duration, and time-of-year of the safety zone. This safety zone will be enforced for a period of four hours on one day on less than

a half mile of the Ohio River. The Coast Guard will issue Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16 about the temporary safety zone. This rule also allows vessels to seek permission from the COTP or a designated representative to enter the safety 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 prohibits entry on a half-mile stretch of the Ohio River for 4 hours on one day during the week from May 6, 2018 through May 11, 2018. 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

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.T08–0422 to read as follows:

§ 165.T08–0422 Safety Zone; Ohio River mile marker 27.8 to mile marker 28.2, Vanport, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Ohio River from mile marker (MM) 27.8 to MM 28.2.

(b) *Effective period.* This rule is effective from 8 a.m. on May 6, 2018 through 6 p.m. on May 11, 2018.

(c) *Enforcement period.* This section will be enforced during the week of May 6, 2018 through May 11, 2018 subject to cargo delivery intervals and potential inclement weather, 30 minutes prior to, during, and 1 hour after any cargo movement in the vicinity of the Vanport Highway Bridge. The Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative will inform the public of the enforcement period through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), and/or Marine Safety Information Broadcasts (MSIBs) or through other means of public notice at least 3 hours in advance of the enforcement period. A safety vessel will coordinate all vessel traffic during the enforcement of this safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23,

entry into this zone is prohibited unless authorized by the COTP or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Marine Safety Unit Pittsburgh.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67.

(3) All persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: May 4, 2018.

L. McClain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2018–09920 Filed 5–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0400]

RIN 1625–AA00

Safety Zone; Grosse Pointe Farms Fireworks, Lake St. Clair, Grosse Pointe Farms, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 560-foot radius of a portion of Lake St. Clair, Grosse Pointe Farms, MI. This zone is necessary to protect spectators and vessels from potential hazards associated with the Grosse Pointe Farms Fireworks.

DATES: This temporary final rule is effective from 10 p.m. on June 30, 2018 through 11 p.m. on July 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2018–

0400 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 temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Detroit
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

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 doing so would be impracticable. The Coast Guard did not receive the final details of this fireworks display in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 Detroit (COTP) has determined that potential hazard associated with fireworks from 10 p.m. on June 30, 2018 through 11 p.m. on July 1, 2018 will be a safety concern to anyone within a 560-foot radius of the launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks are being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. on June 30, 2018 through 11 p.m. on July 1, 2018. The safety zone will encompass all U.S. navigable

waters of Lake St. Clair, Grosse Pointe Farms, MI, within a 560-foot radius of position 42°23.50' N, 082°53.15' W (NAD 83). The safety zone will be enforced from 10 p.m. to 11 p.m. on June 30, 2018. In the case of inclement weather on June 30, 2018, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 1, 2018. 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, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Lake St. Clair from 10 p.m. on June 30, 2018 through 11 p.m. on July 1, 2018. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNM) via VHF-FM marine channel 16 about the zone and the rule allows 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 be enforced for one hour and will prohibit entry into a designated area. 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.T09–0400 to read as follows:

§ 165.T09–0400 Safety Zone; Grosse Pointe Farms Fireworks, Lake St. Clair, Grosse Pointe Farms, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of Lake St. Clair, Grosse Pointe Farms, MI, within a 560-foot radius of position 42°23.50' N, 082°53.15' W (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) of this section will be enforced from 10 p.m. to 11 p.m. on June 30, 2018. In the case of inclement weather on June 30, 2018, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 1, 2018.

(c) *Regulations.* (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit (COTP), or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his on-scene representative.

(3) The “on-scene representative” of COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the COTP or his on-scene representative to obtain permission to enter or operate within the safety zone. The COTP or his on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

Dated: May 4, 2018.

Jeffrey W. Novak,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2018–09935 Filed 5–9–18; 8:45 am]

BILLING CODE 9110–04–P

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

[Docket No. USCG–2018–0265]

Safety Zones; Annual Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones for annual marine events in the Captain of the Port Detroit zone from 8:30 p.m. on May 27, 2018 through 10:30 p.m. on September 2, 2018. Enforcement of these zones is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after these fireworks events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During each enforcement period, no person or vessel may enter the respective safety zone without permission of the Captain of the Port or his designated representative.

DATES: The regulations in 33 CFR 165.941 will be enforced at various dates and times between 8:30 p.m. on May 27, 2018 through 10:30 p.m. on September 2, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Tracy Girard, Prevention, Sector Detroit, Coast Guard; telephone (313) 568–9564, or email Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.941, Safety Zones; Annual Events in the Captain of the Port Detroit Zone, at the following dates and times for the following events:

(1) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(56) will be enforced from 8:30 p.m. to 9:30 p.m. on May 27, 2018.

(2) *Ford (formerly Target) Fireworks, Detroit, MI.* The first safety zone, listed in § 165.941(a)(50)(i)(A), will be enforced from 8 a.m. on June 22, 2018 to 8 p.m. on June 25, 2018. In the case of inclement weather on the scheduled day, this safety zone will be enforced on June 26, 2018 until 11:59 p.m. The second safety zone, listed in § 165.941(a)(50)(i)(B), will be enforced

from 7 p.m. to 11:55 p.m. on June 25, 2018. The third safety zone listed in § 165.941(a)(50)(i)(C), will be enforced from 6 p.m. to 11:59 p.m. on June 25, 2018.

(3) *Harbor Beach Fireworks, Harbor Beach, MI.* The safety zone listed in the § 165.941(a)(8) will be enforced from 9:45 p.m. to 11 p.m. on July 14, 2018. In the case of inclement weather on July 14, 2018, this safety zone will be enforced from 9:45 p.m. to 11 p.m. on July 15, 2018.

(4) *Bay City Fireworks Festival, Bay City, MI.* The safety zone listed in § 165.941(a)(53), will be enforced from 10 p.m. to 10:55 p.m. on July 5, July 6, and July 7, 2018. In the case of inclement weather on any scheduled day, this safety zone will be enforced from 10 p.m. to 10:55 p.m. on July 8, 2018.

(5) *Lexington Independence Festival Fireworks, Lexington, MI.* The safety zone listed in § 165.941(a)(42), will be enforced from 10 p.m. to 10:30 p.m. on July 6, 2018. In the case of inclement weather on July 6, 2018, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 7, 2018.

(6) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(21) will be enforced from 9 p.m. to 10 p.m. on July 3, 2018.

(7) *Harrisville Fireworks, Harrisville, MI.* The safety zone listed in § 165.941(a)(7), will be enforced from 10 p.m. to 11 p.m. on July 7, 2018. In the case of inclement weather on July 7, 2018, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 8, 2018.

(8) *Red, White and Blues Bang Fireworks, Huron, OH.* The safety zone listed in § 165.941(a)(22) will be enforced between from 10 p.m. to 10:45 p.m. on July 7, 2018. In the case of inclement weather on July 7, 2018, this safety zone will be enforced from 10 p.m. to 10:45 p.m. on July 8, 2018.

(9) *Port Sanilac Fireworks, Port Sanilac, MI.* The safety zone listed in § 165.941(a)(38) will be enforced from 10 p.m. to 11 p.m. on July 7, 2018. In the case of inclement weather on July 7, 2018, this safety zone will be enforced from 10 p.m. to 10:45 p.m. on July 8, 2018.

(10) *Oscoda Township Fireworks, Oscoda, MI.* The safety zone listed in § 165.941(a)(32) will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2018. In the case of inclement weather on July 4, 2018, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2018.

(11) *Lakeside July 4th Fireworks, Lakeside, OH.* The safety zone listed in

§ 165.941(a)(20) will be enforced from 9:20 p.m. to 10:10 p.m. on July 4, 2018. In the case of inclement weather on July 4, 2018, this safety zone will be enforced from 9:20 p.m. to 10:10 p.m. on July 5, 2018.

(12) *Grosse Pointe Yacht Club 4th of July Fireworks, Grosse Pointe Shores, MI.* The safety zone listed in § 165.941(a)(41) will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2018. In the case of inclement weather on July 4, 2018, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2018.

(13) *Belle Maer Harbor 4th of July Fireworks, Harrison Township, MI.* The safety zone listed in § 165.941(a)(46) will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2018. In the case of inclement weather on July 4, 2018, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2018.

(14) *Port Austin Fireworks, Port Austin, MI.* The safety zone listed in § 165.941(a)(33), will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2018. In the case of inclement weather on July 4, 2018, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2018.

(15) *City of St. Clair Fireworks, St. Clair, MI.* The safety zone listed in § 165.941(a)(31) will be enforced from 10 p.m. to 10:45 p.m. on July 4, 2018. In the case of inclement weather on July 4, 2018, this safety zone will be enforced from 10 p.m. to 10:45 p.m. on July 5, 2018.

(16) *Tawas City 4th of July Fireworks, Tawas City, MI.* The safety zone listed in § 165.941(a)(47) will be enforced from 10 p.m. to 11 p.m. on July 4, 2018. In the case of inclement weather on July 4, 2018, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 5, 2018.

(17) *Huron River fest Fireworks, Huron, OH.* The safety zone listed in § 165.941(a)(23) will be enforced between from 9:45 p.m. until 10:30 p.m. on July 13, 2018. In the case of inclement weather on July 13, 2018, this safety zone will be enforced from 9:45 p.m. to 10:30 p.m. on July 14, 2018.

(18) *Au Gres City Fireworks, Au Gres, MI.* The safety zone listed in § 165.941(a)(3) will be enforced from 10 p.m. to 10:45 p.m. on June 30, 2018. In the case of inclement weather on June 30, 2018, this safety zone will be enforced from 10 p.m. to 10:45 p.m. on July 1, 2018.

(19) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(28) will be enforced from 8:30 p.m. to 9:30 p.m. on September 2, 2018.

(20) *Lakeside Labor Day Fireworks, Lakeside, OH.* The safety zone listed in

§ 165.941(a)(27) will be enforced from 9 p.m. to 9:50 p.m. on September 1, 2018. In the case of inclement weather on September 1, 2018, this safety zone will be enforced from 9 p.m. to 9:50 p.m. on September 2, 2018.

(21) *Trenton Fireworks, Trenton, MI.* The safety zone listed in § 165.941(a)(45) will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2018.

(22) *Put-In-Bay Fourth of July Fireworks, Put-In-Bay, OH.* The safety zone listed in § 165.941(a)(5) will be enforced from 9 p.m. to 10:30 p.m. on July 4, 2018.

(23) *Caseville Fireworks, Caseville, MI.* The safety zone listed in the § 165.941(a)(36) will be enforced from 9:45 p.m. to 10:30 p.m. on July 3, 2018.

(24) *Ecorse Fireworks, Ecorse, MI.* The safety zone listed in the § 165.941(a)(43) will be enforced from 9:30 p.m. to 10:30 p.m. on July 7, 2018. In the case of inclement weather on July 7, 2018, this safety zone will be enforced from 9:30 p.m. to 10:30 p.m. on July 8, 2018.

Under the provisions of § 165.23, entry into, transiting, or anchoring within these safety zones during the enforcement period is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zones may request permission from the Captain of the Port Detroit or his designated representative. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF-FM or by calling (313)568-9564. The Coast Guard will give notice to the public via Local Notice to Mariners and VHF radio broadcasts that the regulation is in effect.

This document is issued under authority of § 165.941 and 5 U.S.C. 552(a). If the Captain of the Port determines that any of these safety zones need not be enforced for the full duration stated in this document, he may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: May 4, 2018.

Jeffrey W. Novak,
Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2018-09932 Filed 5-9-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0964]

RIN 1625-AA00

Safety Zone; Oregon Inlet, Dare County, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is re-establishing and extending a temporary final rule that creates a temporary safety zone on the waters of Oregon in Dare County, NC. The duration of this safety zone is extended through June 15, 2018. This safety zone is needed to protect personnel, vessels, and the marine environment from the hazards associated with installing the navigation span and will restrict vessel traffic from the bridge's navigation span as it is under construction by preventing vessel traffic on a portion of Oregon Inlet. Entry of vessels or persons into this safety zone is prohibited.

DATES: This rule is effective without actual notice from May 10, 2018 until June 15, 2018. For the purposes of enforcement, actual notice will be used from May 4, 2018, until May 10, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0964 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 Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772-2221, email: Matthew.I.Tyson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background Information and Regulatory History

On October 10, 2017, the North Carolina Department of Transportation notified the Coast Guard that they

would be installing the navigation span of the new Herbert C. Bonner Bridge in Oregon Inlet, Dare County, North Carolina on January 29 through March 24, 2018, with alternate dates of March 25 through May 6, 2018. In response, following publication of an NPRM and solicitation of public comments, on January 1, 2018, the Coast Guard published a final rule establishing a temporary safety zone effective from January 29, 2018 through March 24, 2018, 83 FR 2910 with alternate dates of March 25, 2018 through May 6, 2018. Due to inclement weather and material delays the project has been delayed and the project completion date has been extended through June 15, 2018. The COTP North Carolina has determined that potential safety hazards associated with the construction will be a concern for anyone transiting the Oregon Inlet navigation channel.

The Coast Guard is issuing this temporary rule to re-establish and extend the duration of the temporary safety zone 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 notification of the need to extend the safety zone was not given to the Coast Guard until April 26, 2018. It is impracticable and contrary to the public interest to publish an NPRM because we must extend the safety zone immediately through June 15, 2018, to protect personnel, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase.

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 and contrary to the public interest because immediate action is needed to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP North Carolina has determined

that potential safety hazards associated with the construction will be a concern for anyone transiting the Oregon Inlet navigation channel. The purpose of this rule is to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase.

IV. Discussion of the Rule

This rule re-establishes and extends the effective dates of the rule, published in 83 FR 2910, by 40 days making it effective through June 15, 2018. Construction is expected to take place on 33 separate days during this construction period. The safety zone will be active for two hours each day, with the exact times announced via Broadcast Notices to Mariners at least 48 hours prior to enforcement. The safety zone will include all navigable waters of Oregon Inlet from approximate position 35°46'23" N, 75°32'18" W, thence southeast to 35°46'18" N, 75°32'12" W, thence southwest to 35°46'16" N, 75°32'16" W, thence northwest to 35°46'20" N, 75°32'23" W, thence northeast back to the point of origin, (NAD 1983). This zone is intended to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during this construction phase. No vessel or person will be permitted to enter the safety zone during the designated times.

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, location, and duration of the proposed safety zone. Vessel traffic will not be allowed to enter or transit a portion of Oregon Inlet

during specific two hour periods on 33 separate days from January 29 through June 15, 2018. The specific two hour period for each work day will be broadcasted at least 48 hours in advance and vessels will be able to transit Oregon Inlet at all other times. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. This portion of Oregon Inlet has been determined to be a medium to low traffic area at this time of the year. This rule does not allow vessels to request permission to enter the safety zone covering a portion of the Oregon Inlet navigation channel during the designated times.

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 received no comments from the Small Business Administration on this rulemaking. 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.

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, which guides 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 lasting for two hours on 33 separate days that would prohibit entry into a portion of Oregon Inlet for bridge construction. 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.T05-0964 to read as follows:

§ 165.T05-0964 Safety Zone; Oregon Inlet, Dare County, NC.

(a) *Location.* The following area is a safety zone: All navigable waters of Oregon Inlet, from approximate position 35°46'23" N, 75°32'18" W, thence southeast to 35°46'18" N, 75°32'12" W, thence southwest to 35°46'16" N, 75°32'16" W, thence northwest to 35°46'20" N, 75°32'23" W, thence northeast back to the point of origin (NAD 1983) in Dare County, NC.

(b) *Definitions.* As used in this section—

Captain of the Port means the Commander, Sector North Carolina.

Construction crews means persons and vessels involved in support of construction.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned,

warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) With the exception of construction crews, entry into or remaining in this safety zone is prohibited.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910-343-3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This regulation will be enforced from May 4 through June 15, 2018.

(f) *Public notification.* The Coast Guard will notify the public of the specific two hour closures at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF-FM marine channel 16.

Dated: May 4, 2018.

Bion B. Stewart,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2018-09958 Filed 5-9-18; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0759; FRL-9977-69—Region 5]

Air Plan Approval; Ohio; Regional Haze Plan and Prong 4 (Visibility) for the 2006 and 2012 PM_{2.5}, 2010 NO₂, 2010 SO₂, and 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking the following five actions: Approving the portion of Ohio's November 30, 2016 State Implementation Plan (SIP) submittal seeking to change from reliance on the

Clean Air Interstate Rule (CAIR) to reliance on Cross-State Air Pollution Rule (CSAPR) for certain regional haze requirements; converting EPA's limited approval/limited disapproval of Ohio's March 11, 2011 regional haze SIP to a full approval; withdrawing the Federal Implementation Plan (FIP) provisions that address the limited disapproval; approving the visibility prong of Ohio's infrastructure SIP submittals for the 2012 annual and 2006 24-hour fine particulate matter (PM_{2.5}), 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS); and converting EPA's disapproval of the visibility portion of Ohio's infrastructure SIP submittal for the 2008 ozone NAAQS to an approval.

DATES: This final rule is effective on June 11, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0759. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michelle Becker, Life Scientist, at (312) 886-3901 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michelle Becker, Life Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3901, becker.michelle@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. Background
- II. What action is EPA taking?
- III. Statutory and Executive Order Reviews

I. Background

Ohio submitted infrastructure SIPs for the following NAAQS: 2006 24-hour

PM_{2.5} (September 4, 2009); 2012 annual PM_{2.5} (December 4, 2015); 2010 NO₂ (February 8 and 25, 2013); 2010 SO₂ (June 7, 2013); and 2008 ozone (December 27, 2012), which relied on the State having a fully approved regional haze SIP to satisfy its prong 4 requirements. However, EPA had not fully approved Ohio's regional haze SIP, as the Agency issued a limited disapproval of the State's original regional haze plan on June 7, 2012, due to the plan's reliance on CAIR. To correct the deficiencies in its regional haze SIP and obtain approval of the aforementioned infrastructure SIPs that rely on the regional haze SIP, the State submitted a SIP revision on November 30, 2016, to replace reliance on CAIR with reliance on CSAPR.

Ohio has corrected the deficiencies that led to EPA's limited approval/limited disapproval of the State's regional haze SIP. Accordingly, EPA is approving the regional haze portion of the State's November 30, 2016 SIP revision and converting EPA's previous action on Ohio's regional haze SIP from a limited approval/limited disapproval to a full approval. Specifically, EPA finds that this portion of Ohio's November 30, 2016, SIP revision satisfies the SO₂ and NO_x BART requirements and SO₂ reasonable progress requirements for EGUs formerly subject to CAIR. With the approval of Ohio's regional haze SIP revision, the State's SIP now provides for the measures needed to ensure that its emissions do not interfere with measures required to be included in other states' plans to protect visibility. Therefore, EPA is also approving the prong 4 portion of Ohio's 2006 24-hour PM_{2.5} submission, 2012 annual PM_{2.5} submission, 2010 NO₂ submissions, and 2010 SO₂ submission; as well as converting EPA's disapproval of the prong 4 portions of Ohio's 2008 ozone infrastructure submission to an approval. On September 29, 2017 (82 FR 45481), EPA published a final rule affirming 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. In line with this affirmation, EPA is approving Ohio's regional haze and prong 4 submissions described above.

On December 21, 2017 (82 FR 60572), EPA published a notice of proposed rulemaking (NPR) proposing approval of Ohio's November 30, 2016 SIP revision allowing for the full approval of Ohio's Regional Haze SIP, the removal of the Regional Haze FIP, and the approval of prong 4 elements.

The specific details of Ohio's November 30, 2016 SIP revision and the rationale for EPA's approval are discussed in the NPR and will not be restated here. EPA received three comments on the proposed action, none were relevant to the rulemaking.

II. What action is EPA taking?

EPA is taking the following actions: (1) Approving the portion of Ohio's November 30, 2016 SIP submittal seeking to change from reliance on CAIR to reliance on CSAPR for certain regional haze requirements; (2) converting EPA's limited approval/limited disapproval of Ohio's March 11, 2011 regional haze SIP to a full approval; (3) withdrawing the FIP provisions that address the limited disapproval; (4) approving the visibility prong of Ohio's infrastructure SIP submittals for the 2006 and 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS; and (5) converting EPA's disapproval of the visibility portion of Ohio's infrastructure SIP submittal for the 2008 ozone NAAQS to an approval. EPA is also making some consistency and clarifying edits to Ohio's infrastructure SIP table in 40 CFR 52.1870 for submittals not affected by today's action.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

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

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

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

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.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

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. It will not have substantial direct effects on tribal governments. There are no Indian reservation lands in Ohio. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not

subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

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).

L. Determination Under Section 307(d)

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

M. Congressional Review Act (CRA)

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

N. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: April 30, 2018.

E. Scott Pruitt,
EPA Administrator.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (e) is amended by revising the entries under the headings “Infrastructure Requirements” and “Visibility Protection” to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA—APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * * * *				
Infrastructure Requirements				
Section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone NAAQS.	Statewide	12/5/2007	7/13/2011, 76 FR 41075.	Fully approved for all CAA elements except 110(a)(2)(D)(I), which has been remedied with a FIP.
Section 110(a)(2) infrastructure requirements for the 1997 PM _{2.5} NAAQS.	Statewide	12/5/2007	7/13/2011, 76 FR 41075.	Fully approved for all CAA elements except 110(a)(2)(D)(I), which has been remedied with a FIP.
Section 110(a)(2) infrastructure requirements for the 2006 PM _{2.5} NAAQS.	Statewide	9/4/2009	5/10/2018, [Insert Federal Register citation].	Fully approved for all CAA elements except 110(a)(2)(D)(I), which has been disapproved and remedied with a FIP.

EPA—APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
Section 110(a)(2) infrastructure requirements for the 2008 lead NAAQS.	Statewide	10/12/2011	10/6/2014, 79 FR 60075.	Fully approved for all CAA elements.
Section 110(a)(2) infrastructure requirements for the 2008 ozone NAAQS.	Statewide	12/27/2012	5/10/2018, [Insert Federal Register citation].	Fully approved for all CAA elements except 110(a)(2)(D)(I), which has been disapproved and remedied with a FIP.
Section 110(a)(2) infrastructure requirements for the 2010 NO ₂ NAAQS.	Statewide	2/8/2013	5/10/2018, [Insert Federal Register citation].	Fully approved for all CAA elements.
Section 110(a)(2) infrastructure requirements for the 2010 SO ₂ NAAQS.	Statewide	6/7/2013	5/10/2018, [Insert Federal Register citation].	No action has been taken on 110(a)(2)(D)(I). All other CAA elements have been approved.
Section 110(a)(2)(D) infrastructure requirements for the 2012 PM _{2.5} NAAQS.	Statewide	12/4/2015	5/10/2018, [Insert Federal Register citation].	Fully approved for all CAA elements.
*	*	*	*	*
Visibility Protection				
Regional Haze Plan	Statewide	11/30/2016	5/10/2018, [Insert Federal Register citation].	Full Approval.
Regional Haze Five-Year Progress Report.	Statewide	3/11/2016	12/21/2017, 82 FR 60543.	

§ 52.1886 [Removed and Reserved]

■ 3. Section 52.1886 is removed and reserved.

[FR Doc. 2018–09651 Filed 5–9–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 1**

[WC Docket No. 17–84; FCC 17–154]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's pole attachment complaint rules. This document is consistent with the Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17–154, which stated that the Commission would publish a document in the

Federal Register announcing the effective date of those rules.

DATES: The amendment to 47 CFR 1.1424, published at 82 FR 61453, December 28, 2017, is effective on May 10, 2018.

FOR FURTHER INFORMATION CONTACT:

Michael Ray, Attorney Advisor, Wireline Competition Bureau, at (202) 418–0357, or by email at Michael.Ray@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at (202) 418–2991 or nicole.ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on May 1, 2018, OMB approved, for a period of three years, the information collection requirements relating to the pole attachment complaint rules contained in the Commission's Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17–154, published at 82 FR 61453, December 28, 2017.

The OMB Control Number is 3060–0392. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please

contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–0392, in your correspondence. The Commission will also accept your comments via email at PRA@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on May 1, 2018, for the information collection requirements contained in the modifications to the Commission's pole attachment rules in 47 CFR 1.1424.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0392.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0392.

OMB Approval Date: May 1, 2018.

OMB Expiration Date: May 31, 2021.

Title: 47 CFR Part 1, Subpart J—Pole Attachment Complaint Procedures.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,775 respondents; 1,775 responses.

Estimated Time per Response: 0.5–1.66 hours.

Frequency of Response: On occasion reporting and third-party disclosure requirements.

Obligation to Respond: Required to obtain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 224.

Total Annual Burden: 2,941 hours.

Total Annual Cost: \$450,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No questions of a confidential nature are asked. However, respondents may request that materials or information submitted to the Commission in a complaint proceeding be withheld from public inspection under 47 CFR 0.459.

Needs and Uses: The Commission is requesting OMB approval for a revision to an existing information collection. 47 CFR 1.1424 states that the procedures for handling pole attachment complaints filed by incumbent local exchange carriers (ILECs) are the same as the procedures for handling other pole attachment complaints. Currently, OMB Collection No. 3060–0392, among other things, tracks the burdens associated with utilities defending against complaints brought by ILECs related to unreasonable rates, terms, and conditions for pole attachments. In *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17–84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17–154 (rel. Nov. 29, 2017) (*Wireline Infrastructure Order*), the Commission, among other things, expanded the type of pole attachment complaints that can be filed by ILECs, now allowing them to file complaints related to a denial of pole access by utilities. The Commission will use the information collected under this revision to 47 CFR 1.1424 to hear and resolve pole access

complaints brought by ILECs and to determine the merits of the complaints.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–09970 Filed 5–9–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 13–39; FCC 18–45]

Rural Call Completion

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reorients its existing rural call completion rules to better reflect strategies that have worked to reduce rural call completion problems while at the same time reducing the overall burden of its rules on providers. This Second Report and Order (*Order*) adopts a new rule requiring “covered providers”—entities that select the initial long-distance route for a large number of lines—to monitor the performance of the “intermediate providers” to which they hand off calls. The *Order* also eliminates the call completion reporting requirement for covered providers that was established by the Commission in 2013.

DATES: Effective June 11, 2018, except for the rule contained in 47 CFR 64.2113, which requires approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing approval of this requirement and the date the rule will become effective.

FOR FURTHER INFORMATION CONTACT:

Wireline Competition Bureau, Competition Policy Division, Zach Ross, at (202) 418–1033, or zachary.ross@fcc.gov. For further information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Second Report and Order in WC Docket No. 13–39, adopted and released on April 17, 2017. The full text of this document, including all Appendices, is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257,

Washington, DC 20554. It is also available on the Commission’s website at <https://www.fcc.gov/document/fcc-takes-new-steps-improve-rural-call-completion-0>.

I. Synopsis

A. Covered Provider Monitoring of Performance

1. Monitoring Requirement

1. The record in this proceeding and our complaint data establish that rural call completion issues persist. Covered providers have incentives both to serve customers well and minimize routing costs; but these incentives are in tension because least-cost routing can lead to poor call completion performance. While intercarrier compensation reform has the potential to greatly improve rural call completion, it is unlikely to eliminate all incentives that may lead to call completion issues in the foreseeable future. We are committed to refining our approach to better target these important issues.

2. Building on our proposal in the *RCC 2nd FNPRM*, 82 FR 34911, we specifically require that for each intermediate provider with which it contracts, a covered provider shall: (a) Monitor the intermediate provider’s performance in the completion of call attempts to rural telephone companies from subscriber lines for which the covered provider makes the initial long-distance call path choice; and (b) based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing the intermediate provider from a particular route after sustained inadequate performance. We revise subsection (b) of the rule from our proposal in the *RCC 2nd FNPRM* to direct covered providers to correct performance problems, rather than hold intermediate providers accountable. To be clear, taking steps that are reasonably calculated to correct any identified performance problem with the intermediate provider often will involve holding the intermediate provider accountable for its performance. Nevertheless, we find this change to the rule text warranted to focus subsection (b) directly on resolving rural call completion problems, rather than a particular means for doing so. Additionally, the RCC Act gives us authority to hold intermediate providers accountable for meeting service quality standards, so specifically directing covered providers to hold intermediate providers accountable is less beneficial than prior to the RCC Act’s enactment. We include the phrase “take steps that

are reasonably calculated to” and the word “identified” consistent with our conclusion that we do not impose strict liability on covered providers. As explained in detail below, the monitoring requirement we adopt entails both *prospective* evaluation to prevent problems and *retrospective* investigation of any problems that arise. We also require covered providers to take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider.

3. The monitoring requirement we adopt has significant support in the record. It encourages covered providers to ensure that calls are completed, assigns clear responsibility for call completion issues, and enhances our ability to take enforcement action. We therefore reject arguments that Commission action is unnecessary. We anticipate that the monitoring rule we adopt will ensure better call completion to rural areas by covered providers. We recognize that as a hypothetical alternative means to increase the incentive for good rural call completion performance, we could instead increase the size of penalties for violations of the Act and our rules stemming from rural call completion failures. We nonetheless find the monitoring rule we adopt necessary for several reasons. Today’s *Order* details appropriate action required of covered providers to serve this goal and adopts improved substantive measures, such as requiring prospective monitoring and disclosure of contact information. As these new measures will serve our goal to improve rural call completion, they should reduce the necessity for enforcement action, and aid our enforcement efforts when needed. Although the existence of statutory penalties may encourage compliance with the law, they should not supplant our efforts to facilitate compliance in the first instance. While sections 201 and 202 of the Act provide important support for our rural call completion efforts, establishing a new rule with more detailed guidelines will enhance our ability to take enforcement action and provide additional certainty to covered providers regarding the actions they must take. Call completion problems persist as to both traditional telephony and VoIP. Therefore, we reject VON’s argument that we should continue to allow VoIP providers to self-regulate. The passage of the RCC Act does not obviate the need for covered provider regulation, contrary to ITTA’s contention. In the *Further Notice* accompanying this *Order*, we seek comment on whether to change the monitoring requirements in light of the

service quality standards for intermediate providers under consideration, for instance by creating a safe harbor for covered providers who work with intermediate providers that meet our quality standards. While we expect that implementing the RCC Act will lead to improved intermediate provider performance, we nonetheless agree with commenters who assert that covered providers have a responsibility to monitor intermediate provider performance. The record makes clear that it is important to hold a central party responsible for call completion issues. Given that covered providers select the initial long-distance path and therefore can choose how to route a call, we find it appropriate that they should have responsibility for monitoring rural call completion performance. Further, a covered provider that originates a call is easier to identify than an intermediate provider in a potentially lengthy and complicated call path, facilitating enforcement where needed.

4. *Prospective Monitoring.* As part of fulfilling the monitoring requirement, covered providers have a duty to prospectively evaluate intermediate providers to prevent reasonably foreseeable problems. We agree with NASUCA that after-the-fact remediation without other preventative actions is insufficient to prevent call completion problems from occurring. Required prospective monitoring includes regular observation of intermediate provider performance and call routing decision-making; periodic evaluation to determine whether to make changes to improve rural call completion performance; and actions to promote improved call completion performance where warranted. To ensure consistent prospective monitoring and facilitate Commission oversight, we expect covered providers to document their processes for prospective monitoring and identify staff responsible for such monitoring functions in the written documentation, and we expect covered providers to comply with that written documentation in conducting the required prospective monitoring.

5. We agree with numerous commenters that covered providers must have flexibility in determining and conducting prospective monitoring that is appropriate for their respective networks and mixes of traffic. Covered providers have unique “network-specific demands and customer expectations” and we agree that “a one-size-fits-all implementation” could unduly limit their ability to meet those demands and expectations. We therefore provide covered providers the flexibility to determine the standards and methods

best suited to their individual networks. We agree with Comcast that regardless of how a covered provider engages in monitoring, its approach must involve comparing rural and non-rural areas to ensure that Americans living in rural areas are receiving adequate service. Covered providers may make this comparison based on any measures reasonably calculated to evaluate call completion efficacy. Such measures may include metrics such as call answer rate, call completion rate, or network effectiveness ratio; or evaluating the implementation of specific measures to ensure adequate performance that build on those we propose to require intermediate providers to meet to comply with the service quality standards required under the RCC Act. Verizon’s consent decree provides negative traffic spikes as one internal investigation trigger. The Verizon rural call completion study, commissioned pursuant to this consent decree, explains that a negative spike is a “sharp decrease from prior measurements over a short time.” We encourage covered providers to consider this and other possible metrics for use in fulfilling the monitoring requirement. Although we do not believe that it should be unduly difficult for covered providers to evaluate and compare how their intermediate providers perform in delivering traffic to individual rural OCNs, we also note that the Bureau’s RCC Data Report illustrates some challenges of metrics-based evaluations. Accordingly, we encourage providers to explore and test a wide range of approaches and, where successful, share those solutions with industry peers and the Commission.

6. Conversely, we reject the argument that we should mandate the standards and best practices contained in the ATIS RCC Handbook. The ATIS RCC Handbook intermediate provider best practices include, inter alia: Managing the number of intermediate providers (*i.e.* number of “hops”); installation and use of test lines; contractual agreements with intermediate providers to govern intermediate provider conduct; management of direct and indirect looping; maintenance of sufficient direct termination capacity; non-manipulation of signaling information; inheritance of restrictions; intercarrier process requirements; and acceptance testing. As to the manipulation of signaling information, section 64.1601(a)(2) of the Commission’s rules already requires intermediate providers within an interstate or intrastate call path that originate and/or terminate on the PSTN to pass unaltered to subsequent

providers in the call path signaling information identifying the telephone number, or billing number, if different, of the calling party that is received with a call. In addition, section 64.2201(b) already requires intermediate providers to return unaltered to providers in the call path any signaling information that indicates that the terminating provider is alerting the called party, such as by ringing. The highly regarded ATIS RCC Handbook is a voluntary, industry collaborative approach to help “ensur[e] call completion” for rural telephone company customers. We agree with commenters that mandating the ATIS RCC Handbook best practices “could have a chilling effect on future industry cooperation to develop solutions to industry problems.”

7. However, we also agree with commenters that we should encourage adherence to the ATIS RCC Handbook best practices. As such, while we decline to mandate compliance with the ATIS RCC Handbook best practices, we will treat covered provider adherence to all the ATIS RCC Handbook best practices as a safe harbor that establishes compliance with the monitoring rule. Thus, a covered provider that adheres to all of the ATIS RCC Handbook best practices will be deemed to be compliant with the monitoring rule. This safe harbor applies only to the best practices set forth in the 2015 version of the ATIS RCC Handbook, identified above. We will also take the ATIS RCC Handbook best practices into account in evaluating whether a covered provider has developed sufficiently robust and compliant monitoring processes. We find that this approach will encourage adherence to the best practices while giving covered providers flexibility to tailor their practices to their particular networks and business arrangements. Where a rural telephone company has a test line, we encourage a covered provider to make use of that test line as a part of its regular observation of intermediate provider performance.

8. We strongly encourage covered providers to limit the number of intermediate providers in the call chain. We specifically encourage covered providers to take advantage of the Managing Intermediate Providers Safe Harbor. Managing the number of intermediate providers in the call chain is an ATIS RCC Handbook best practice, and the record shows that limiting the number of intermediate providers can help ensure call completion to rural areas. By requiring covered providers to monitor and take responsibility for the performance of their intermediate providers, we anticipate that the rules

we adopt will encourage covered providers to limit the number of intermediate providers in the call chain. Nevertheless, consistent with our decision to give covered providers flexibility, we decline to mandate a specific limit on the number of intermediate providers in the call chain. Such a mandate would be unduly rigid, as even those who advocate such a mandate acknowledge that exceptions would be needed. We specifically reject HD Tandem’s proposal to allow additional intermediate providers only upon a waiver request as unduly burdensome and too slow to be compatible with the dynamic routing needs of covered providers. We are concerned that a specific limit mandate conflates the number of “hops” with good hops; for example, it assumes that a small number of badly performing intermediate providers are better than multiple well-performing intermediate providers. Although proponents of a strict limit argue that it would impose “virtually no burden on originating providers beyond the inclusion of effective clauses in their contracts with their intermediate providers,” the record indicates that covered providers would face additional burdens if they lacked flexibility to efficiently route calls during periods of high call volume such as natural disasters and national security related events. We note that only two covered providers have stated that they meet the Managing Intermediate Provider Safe Harbor, notwithstanding the reduced burdens under the *RCC Order* that result. This fact suggests that the vast majority of covered providers have concluded that the benefits associated with always limiting to two the number of intermediate providers in the call path do not outweigh the associated costs.

9. While we decline to impose a strict limit on the number of intermediate providers in the call chain, we recognize that an animating concern of those who advocate for such a limit is avoiding an attenuated call path in which responsibility for problems is difficult or impossible to trace and in which no one party “owns” ensuring successful call completion. As discussed below, we require covered providers to exercise oversight regarding their entire intermediate provider call path to rural destinations. The RCC Act further requires that intermediate providers register with the Commission, and precludes covered providers from using intermediate providers who are not registered. These requirements will help to ensure that covered providers only use responsible intermediate providers

and can identify intermediate providers in the call path. We therefore are able to address the underlying problem of diffuse responsibility without imposing a rigid mandate capping the number of intermediate providers.

10. *Retrospective Monitoring.* We also require covered providers to retrospectively investigate any rural call completion problems that arise. This requirement is consistent with our proposal in the *RCC 2nd FNPRM*, which several commenters support. Evidence of poor performance warranting investigation includes but is not limited to: Persistent low answer or completion rates; unexplained anomalies in performance reflected in the metrics used by the covered provider; repeated complaints to the Commission, state regulatory agencies, or covered providers by customers, rural incumbent LECs and their customers, competitive LECs, and others; or as determined by evolving industry best practices, including the ATIS RCC Handbook.

11. We interpret the retrospective monitoring requirement as encompassing, at minimum, the duties under sections 201, 202, and 217 of the Act set forth in the *2012 Declaratory Ruling*. In that decision, the Bureau clarified that “it is an unjust and unreasonable practice in violation of section 201 of the Act for a carrier that knows or should know that it is providing degraded service to certain areas to fail to correct the problem or to fail to ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately.” The Bureau further clarified that “adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services and violate section 202 of the Act.” In the *2012 Declaratory Ruling*, the Bureau also stated: “Service problems could be particularly problematic for TTY and amplified telephones used by persons with hearing disabilities. Carriers that fail to ensure that services are usable by and accessible to individuals with disabilities may be in violation of section 255 of the Act. Accordingly, practices that result in disparate quality of service delivered to rural areas could be found unlawful under sections 202 and 255 of the Act.” Finally, the Bureau, relying on section 217 of the Act, stated that “if an underlying provider is

blocking, choking, or otherwise restricting traffic, employing other unjust or unreasonable practices in violation of section 201, engaging in unjust or unreasonable discrimination in violation of section 202, or otherwise not complying with the Act or Commission rules, the carrier using that underlying provider to deliver traffic is liable for those actions if the underlying provider is an agent or other person acting for or employed by the carrier.” We both affirm the *2012 Declaratory Ruling* as a clarification of the statutory provisions discussed by the Bureau and clarify that under the rule we adopt, the *2012 Declaratory Ruling* sets forth the minimum retrospective monitoring duty of covered providers. The statutory interpretations set forth in the *2012 Declaratory Ruling* (and clarified here) apply to carriers. The duties in the *2012 Declaratory Ruling* (and clarified here) apply to covered providers, and constitute the minimum bounds of the retrospective monitoring requirement. Based on these determinations, we find it unnecessary to codify separately the prohibition on blocking, choking, reducing, or restricting traffic explicated in the *2012 Declaratory Ruling*.

12. We specifically highlight that under the *2012 Declaratory Ruling*, “a carrier that knows or should know that calls are not being completed to certain areas, and that engages in acts (or omissions) that allow or effectively allow these conditions to persist” may be liable for a violation of section 201 of the Act. Thus, willful ignorance will not excuse a failure by a covered provider or carrier to investigate evidence of poor performance to a rural area, such as repeated complaints, persistent low answer rates, or other indicia identified above. When this evidence of persistent poor performance exists with respect to a rural area, the provider should know that there may be a problem with calls being completed to that area and it has a duty to investigate. We further clarify that a covered provider or carrier may only deem the duty set forth in the *2012 Declaratory Ruling* satisfied if it: (a) Promptly resolves any anomalies or problems and takes action to ensure they do not recur; or (b) determines that responsibility lies with a party other than the provider itself or any of its downstream providers and uses commercially reasonable efforts to alert that party to the anomaly or problem. Below, we provide additional direction under the monitoring rule we establish regarding how covered providers must fulfill prong (a) above with respect to

intermediate providers with which they contract.

13. *Remedying Problems Detected During Retrospective Monitoring.* We require that, based on the results of the required monitoring, covered providers must take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing the intermediate provider from a particular route after sustained inadequate performance. We agree with NCTA that “isolated call failures . . . have always been inherent in the exchange of voice traffic,” and clarify that our monitoring rule does not require covered providers to take remedial action solely to address isolated downstream call failures. As USTelecom observed, “carriers have found that the most effective means of identifying and resolving call completion issues has been through their own monitoring which includes investigating specific complaints and ensuring that intermediate providers are held accountable.” Correcting identified performance problems is an important part of ensuring that monitoring leads to real improvements in the call completion process.

14. Where a covered provider detects a persistent problem based on retrospective monitoring, we require the covered provider to select a solution that is reasonably calculated to be effective. A temporary and quickly abandoned solution is not acceptable. Covered providers that do not effectively correct problems with call completion to specific areas have “allow[ed] the conditions to persist” and are subject to enforcement action for violation of the monitoring rule as well as the Act and our call blocking prohibition thereunder. We agree with NCTA that requiring a “permanent” solution is too rigid and may not account for a rapidly changing marketplace. At the same time, a covered provider’s or carrier’s responsibility under the monitoring rule and *2012 Declaratory Ruling* is not met by a temporary route correction and nothing more; providers and carriers are also responsible for ensuring that the problems do not recur.

15. Although we give covered providers flexibility in the remedial steps they choose so long as they pursue a solution that is reasonably calculated to be effective, we specifically require removing intermediate providers from routes where warranted. The ATIS RCC Handbook identifies “temporarily or permanently removing the intermediate provider from the routing path” as a best practice when an intermediate

provider fails to perform at an acceptable service level, and we agree that this must be among the remedial steps that covered providers must take where appropriate. The California Public Utilities Commission (CPUC) endorses route removal as a remedy and suggests that the only exception for removal of sufficiently badly performing intermediates “should be for call paths for which there are no alternative routes, so long as the lack of an alternative route can be reasonably documented.” We agree with the CPUC and conclude that where an intermediate provider has sustained inadequate performance, removal from a particular route is necessary except where a covered provider can reasonably document that no alternative routes exist. Sustained inadequate performance is manifest when, even if a provider alters routing to a rural area, call completion problems with that provider persist or recur within days, weeks, or months after the routing change.

16. We reject arguments that fulfilling this obligation is unduly difficult or infeasible. Both the record and information gathered in enforcement investigations indicates that some providers have removed intermediate providers from call paths for poor performance. We disagree with Sprint that identifying “sustained inadequate performance” is “extraordinarily difficult”—if a covered provider fulfills its monitoring duty, it will be able to identify persistent outliers and sources of repeated anomalies or problems. Further, the monitoring requirement we establish forecloses the argument that fulfilling the duty to correct identified performance problems is not feasible because a covered provider hands off traffic without exercising further oversight. The covered provider has the obligation to prevent poor rural call completion performance, and business models that foreclose performing this duty are unacceptable.

17. *Scope of Monitoring Requirement—Call Attempts to Rural Competitive LECs.* Although our recording, retention, and reporting requirements are limited to calls to incumbent LECs, we require covered providers to monitor rural call completion performance to both rural incumbent and rural competitive LECs. We recognize that rural competitive LEC subscribers also encounter rural call completion issues. Indeed, a significant percentage of the rural call completion complaints received by the Commission are from rural competitive LECs and their customers. In 2013, the Commission declined to extend the

recordkeeping requirements for call attempts to rural competitive LECs because “rural CLEC calling areas generally overlap with nonrural ILEC calling areas, calling patterns to rural CLECs differ from those to rural ILECs, and rural CLECs generally employ different network architectures.” Although these factors illustrate recordkeeping challenges, they do not explain why covered providers have any less responsibility to complete calls to customers of rural competitive LECs or to monitor the performance of intermediate providers that deliver traffic to these providers. In our proposed rule, we used the phrase “rural incumbent LEC,” which we proposed defining as an incumbent LEC that is a rural telephone company, as each of those terms are in 47 CFR 51.5. In our final rule, we replace the phrase “rural incumbent LEC” with “rural telephone company,” which encompasses both incumbent and competitive LECs. To ensure that covered providers have adequate information to monitor intermediate provider performance, we direct NECA to prepare on an annual basis and make publicly available a list of rural competitive LEC OCNs in addition to continuing its annual listing of rural and non-rural incumbent LEC OCNs. We recognize that because competitive LECs are not defined by incumbent service territories like incumbent LECs, identifying rural competitive LECs may be difficult in some cases, and NECA’s rural competitive LEC OCN list may not be comprehensive. We direct NECA to use best efforts to identify rural competitive LECs and their OCNs for inclusion in the list. We do not require covered providers to monitor calls to rural competitive LECs or their OCNs that do not appear on NECA’s list. We nevertheless view requiring monitoring to rural competitive LECs and NECA’s preparation of the list as valuable to promote greater call completion to the customers of rural competitive LECs that do appear on the list. We encourage rural competitive LECs to identify their rural OCNs to NECA for use in preparation of this list.

2. Covered Provider Accountability

18. Under the monitoring rule we adopt today, covered providers must exercise responsibility for the performance of the entire intermediate provider call path to help ensure that calls to rural areas are completed. We will hold covered providers accountable for exercising oversight regarding the performance of all intermediate providers in the path of calls for which the covered provider makes the initial

long-distance call path choice. We expect covered providers to take remedial measures where necessary and covered providers who fail to remediate problems are subject to enforcement action. As explained below, covered providers may fulfill their monitoring obligation through direct monitoring or a combination of direct monitoring and contractual restrictions.

19. We find that allocating this responsibility to covered providers is appropriate because, as the entity that makes the initial long-distance call path choice, covered providers are in a position to exercise responsibility over the downstream call path to the terminating LEC. As to covered provider carriers, Verizon correctly notes that our authority under sections 201 and 202, “combined with [the Commission’s] . . . longstanding policy,” makes carriers “responsible for the provision of service to their customers even when they contract with intermediate providers to carry calls to their destinations.” Because the definition of “covered provider” excludes entities with low call volumes, we expect that covered providers are of sufficient size to put resources into monitoring and negotiate appropriate provisions with any intermediate providers with which they contract. In stating this, we do not suggest that smaller carriers are free from call completion obligations. We believe that placing responsibility on a single, readily identifiable party that ultimately controls the call path will be an effective measure in addressing rural call completion issues going forward. Further, covered providers are in a position to promptly remedy rural call completion issues when they arise by virtue of their contractual relationships with intermediate providers and their ability to modify call routing paths, enabling rural call completion issues to be resolved without waiting for Commission enforcement action, thereby benefiting rural consumers.

20. For common carriers, the duty to monitor the entire intermediate provider call path also flows from section 217, which states that “the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.” As the *2012 Declaratory Ruling* explained, based on section 217, “a carrier remains responsible for the provision of service to its customers even when it contracts with another provider to carry the call to its destination.” The Commission has applied a similar policy to carriers in

the slamming context, as well as to broadcast and wireless licensees. We find it appropriate to apply this same principle to all covered providers for the reasons set forth above. Thus, a covered provider is responsible when, for example, a downstream provider unlawfully injects ring tone on a call, in violation of 47 CFR 64.2201.

21. We give covered providers flexibility in how they fulfill this responsibility to determine the standards and methods best suited to their individual networks. Under the rule we adopt today, a covered provider is accountable for monitoring the performance of any intermediate provider with which it contracts, including that intermediate provider’s decision as to whether calls may be handed off to additional downstream intermediate providers—and if so, how many—and whether it has taken sufficient steps to ensure that calls will be completed post-handoff. We require covered providers to directly monitor the performance of intermediate providers with which they have a contractual relationship, and we decline to impose an unnecessarily burdensome mandate requiring direct covered provider monitoring of the entire call chain. We use the term “direct” monitoring to distinguish active monitoring from reliance solely on contractual protections. With respect to “direct” monitoring, we permit covered providers to perform the monitoring themselves or rely on a third-party vendor, acting on behalf of the covered provider, that directly monitors the intermediate provider and reports back to the covered provider. We underscore that covered providers will remain ultimately responsible for monitoring even where they use a third-party vendor. Rather, a covered provider may manage the call path through (i) direct monitoring of all intermediate providers or (ii) a combination of direct monitoring of contracted intermediate providers and contractual restrictions on directly monitored intermediate providers that are reasonably calculated to ensure rural call completion through the responsible use of any further intermediate providers. The ATIS RCC Handbook provides that as a best practice, contractual agreements can be used to ensure that intermediate providers meet performance expectations and hold intermediates accountable for performance. Contractual measures that meet this standard include limiting the use of further intermediate providers and provisions that ensure quality call completion.

22. We encourage covered providers to incorporate the following provisions, suggested by NASUCA: (1) “[r]equir[ing] each downstream carrier on an ongoing basis to provide specific information regarding its system and the limitations of its system, including information regarding any difficulties its system may have interoperating with other systems using different technologies”; (2) “[r]equir[ing] each downstream carrier on an ongoing basis to provide specific information regarding any bandwidth or other capacity constraints that would prevent its system from completing calls to particular destinations at busy times”; (3) “[r]equir[ing] each downstream carrier to use properly designed and properly functioning alarms in its system that ensure immediate notice of any outages on its system”; (4) “[r]equir[ing] each downstream carrier to use properly designed and properly functioning mechanisms to ensure that the downstream carrier, if unable to complete a call, timely releases the call back to the upstream carrier”; (5) “[r]equir[ing] each downstream carrier to use properly designed and properly functioning mechanisms to ensure that the downstream carrier, if making successive attempts to route the call through different lower-tiered downstream carriers, timely passes the call to a second (or third or fourth) lower-tiered downstream carrier if a first (or second or third) lower-tiered downstream carrier cannot complete it”; (6) “[r]equir[ing] each downstream carrier to use properly designed and properly functioning mechanisms to detect and control looping, including the use of hop counters or other equivalent mechanisms that alert a carrier to the presence of a loop”; (7) “[e]stablish[ing] direct measures of quality and requir[ing] downstream carriers to meet them”; (8) “[e]stablish[ing] and implement[ing] appropriate sanctions for intermediate carriers that fail to meet standards”; (9) “[r]equir[ing] downstream carriers to manage lower-tiered downstream carriers and to hold lower-tiered downstream carriers to the same standards that they themselves are held”; and (10) “[d]efin[ing] the responsibilities of downstream carriers in a written agreement.” Based on these suggestions, including “[e]stablish[ing] direct measures of quality and requir[ing] downstream carriers to meet them,” we do not agree with NCTA that “direct monitoring” is only feasible with the first intermediate provider in the call path and not with subsequent intermediate providers.” Additionally,

we do not see any benefit to foreclosing the option to rely entirely on direct monitoring. Insofar as a covered provider relies on contractual restrictions rather than direct monitoring for downstream intermediate providers, the covered provider must ensure these restrictions flow down the entire intermediate provider call path. For example, suppose calls travel from covered provider X to intermediate providers A, B, and C in turn, and X contracts only with A. X must directly monitor A. X must ensure that A imposes contractual restrictions on B reasonably calculated to ensure rural call completion, and X must ensure that A or B imposes such restrictions on C. Thus, a covered provider may not avoid liability for poor performance by asserting that a rural call went awry at an unknown point down a lengthy chain of intermediate providers or by claiming solely that its contracts with initial downstream vendors prohibited unlawful conduct. Conversely, covered providers that engage in reasonable monitoring efforts will not be held responsible for intermediate provider conduct that is not, or could not be, identified through such reasonable monitoring efforts. This conclusion is consistent with our decision not to impose strict liability under the monitoring rule.

23. Our balanced approach ensures that covered providers exercise responsibility for rural call completion without imposing an unduly rigid or burdensome mandate. We therefore reject various “all-or-nothing” approaches. We reject the argument that covered providers should not bear any responsibility for the performance of non-contracted intermediate carriers. This argument mistakenly assumes that the covered provider is unable to reach the behavior of downstream intermediate providers through directly contracted intermediate providers, and the record indicates otherwise. Conversely, because we are able to require covered providers to exercise responsibility for the performance of the entire intermediate provider call path while providing significant flexibility in how they do so, we find mandating direct covered provider monitoring of the entire call chain unnecessarily burdensome. Similarly, we do not mandate that covered providers must directly contract with all intermediate providers in the call path. Such a requirement would be superfluous given covered provider responsibility for the overall call path, and we agree with CTIA that such a requirement would unduly prescribe provider conduct.

Nonetheless, we encourage covered providers to directly contract with all intermediate providers in the call path consistent with the ATIS RCC Handbook best practices.

3. Covered Provider Point of Contact

24. Communication is key to addressing rural call completion issues. Of particular importance is communication between covered providers, which make the initial long-distance call path choice, and terminating rural LECs. Together, these entities account for the beginning and end of the long-distance call path. While ATIS maintains a contact list of service provider rural call completion points of contact, participation is voluntary, and accordingly the list only contains contact information for a “limited number of covered providers.” To participate in the ATIS NGIIF Service Provider Contact Directory for rural call completion, ATIS asks providers to submit the following information: Toll free number; contact; contact number; email; fax; website; and other information. As NTCA and WTA explain, “[r]ural providers often report that they have no way to contact the responsible originating carrier or if they do, the person they contact has little to no understanding of the issue.” Conversely, when participants in the call chain communicate, they are more likely to resolve issues that arise.

25. We agree with NTCA and WTA that we should require covered providers to provide and maintain contact information as a low-cost measure to facilitate industry collaboration to address call completion issues. We therefore will require covered providers to make available on their websites a telephone number and email address for the express purpose of receiving and responding promptly to any rural call completion issues. We note that ATIS requests similar information for its voluntary rural call completion service provider contact directory. We require covered providers to ensure that the contact information available on their website is easy to find and use. Further, covered providers must ensure that any staff reachable through this contact information has the technical capability to promptly respond to and address call completion concerns. As the operators and experts of their individual call networks, covered provider technical staff are best positioned to expeditiously solve issues as they arise and as such should be the first point of contact in identifying and resolving rural call completion issues. We expect that covered providers will ensure that there is a means by which

persons with disabilities can contact them and that the contact information is available on a covered provider's website in a manner accessible by persons with disabilities.

26. Covered providers must keep the contact information current on their websites, updating with any changes within ten business days. The same timeline for updates applies to contact information placed on websites for responding to closed captioning concerns under our television closed captioning rules. Furthermore, because call completion problems may jeopardize public health and safety, we require covered providers to respond to communications regarding rural call completion issues via the contact information required under the rule we adopt as soon as reasonably practicable and within no more than a single business day under ordinary circumstances. We recognize, however, that complex call completion issues may take longer than a single day to resolve, and clarify that this requirement refers to an initial response in such circumstances and does not indicate that all such issues must be resolved within a single business day.

27. We expect NECA to use the disclosures we require to establish and maintain a central, public list of covered provider contact information that can be easily accessed by rural providers on NECA's website. To facilitate creation of this list, we encourage covered providers to provide directly to NECA the same contact information that they make available on their websites pursuant to our requirement above, and we encourage covered providers to update NECA if they update the contact information on their websites. We would expect NECA to update its contact information directory regularly so that it remains current. We recognize that ATIS already maintains a voluntary contact directory. We expect NECA, given its role in compiling the list of rural carriers, would work with ATIS to develop a repository of covered provider contact information, ensuring a comprehensive list of covered provider contact information is available for reference by rural providers. We treat the contact information that NECA makes available in the same manner as the contact information that the covered provider makes available on its website in terms of the covered provider's duty to respond in a timely fashion. In other words, we require covered providers to respond to communications regarding rural call completion issues via the contact information that NECA makes available as soon as reasonably practicable, and within no more than a

single business day under ordinary circumstances. An additional repository for contact information that is specific to covered providers will further encourage inter-and intra-industry cooperation to address call completion issues by offering carriers a centralized resource that facilitates communication if and when problems occur. We also encourage all providers, including rural providers, to submit their own contact information for inclusion in the ATIS Service Provider Contact Directory, which continues to be a helpful single source of contact information.

4. Other Issues

28. *Rural Incumbent LEC Lists.* Windstream and NCTA note that there "is no reliable method for covered providers to identify calls to rural incumbent LECs, other than by using the list of rural operating company numbers (OCNs) currently generated by NECA." We therefore direct NECA to continue updating its rural and non-rural OCN lists on a yearly basis; this list will also facilitate continued compliance with the recording and retention rules. We continue to include non-rural OCNs both to facilitate comparisons of rural and non-rural call completion by covered providers and for use in continuing to comply with the recording and retention rules. As noted above, we also direct NECA to prepare a list of rural competitive LEC OCNs on a yearly basis.

29. *Performance Targets.* We decline to set specific performance targets or benchmarks for call answer rates, call completion rates, or any other performance metric. We agree with commenters who assert that "the Commission should refrain from mandating specific performance metrics for covered carriers or for their intermediate carriers." In connection with this, we observe that what constitutes poor rural call completion performance varies according to context. For example, carriers with a high autodialer or robocall volume may experience low answer or completion rates, possibly leading to the conclusion that a low number answer rate percentage is an appropriate benchmark (and thus not poor performance) for such covered providers. Throughout this proceeding, both the Commission and industry have noted that it is uncertain whether covered providers can segregate autodialer and other telemarketing traffic from other types of traffic. In other contexts, that same percentage would be considered poor performance for covered providers originating only residential traffic. Similarly, the RCC Data Report

identified a number of challenges in establishing metrics as a result of inaccurate signaling and misalignment in the mapping of ISUP cause codes to SIP response messages. We therefore opt to give individual covered providers flexibility to establish their own methodologies that are appropriate to their networks and systems in monitoring call performance.

30. *Good Faith.* We reject arguments that we should establish a "good faith" threshold for compliance whereby we would not impose liability on covered providers making "a good faith effort to comply with the rules." The approach we adopt captures the desire for flexibility underlying some of these requests, and gives covered providers discretion to monitor as they see fit in a manner best suited to their individual networks and business arrangements. We do not impose strict liability on covered providers for a call completion failure; rather, we may impose a penalty where a covered provider fails to take actions to prevent reasonably foreseeable problems or, if it knows or should know that a problem has arisen, where it fails to investigate or take appropriate remedial action. Further, our monitoring rule focuses on persistent problems, and we will not impose liability under the monitoring rule for an isolated call failure. That said, a "good faith" threshold on top of the flexible approach we adopt would add a layer of unhelpful uncertainty as to what constitutes compliance. We are committed to ensuring call completion to all Americans, and we find a "good faith" threshold unduly lenient. We also agree with NASUCA that "[i]njecting subjective questions of motivation into enforcement actions will compromise their effectiveness and compromise the reliability of the network." We agree with NASUCA that adopting a good faith limitation does not provide greater clarity to our rule.

31. *Exempt Class of Service.* CenturyLink suggests we allow covered providers to offer a second class of service that would be "exempt from any new call completion rules." We decline to implement this approach. CenturyLink posits that call completion is "less important" to customers placing marketing calls—as opposed to those originating from residential customers—and therefore these calls should be exempt from any rural call completion monitoring requirements. This second class would presumably include autodialer traffic.

32. We reject allowing an exempt class of service for several reasons. First, we believe all Americans deserve all lawful calls to be completed, regardless

of their purpose. In particular, calling parties should not be able to decide unilaterally which calls rural Americans deserve to receive reliably. We also prefer an approach that is potentially over-inclusive in ensuring call completion compared to a system that is potentially under-inclusive. Next, the present call signaling system does not distinguish between residential calls and any other call made to a residential area. Because it therefore is not possible to evaluate a covered provider's class categorization decision, a covered provider could categorize traffic inaccurately to suggest superior call completion performance (and thus imply superior monitoring) without the possibility of detection. Finally, a two-class practice could lead to violations of section 201 of the Act insofar as it entails a carrier that knows or should know that calls are not being completed to certain areas engaging in acts or omissions that allow or effectively allow these conditions to persist.

33. *Certification, Audit, or Disclosure Requirement.* We decline to impose a certification or audit requirement in conjunction with the monitoring rule. The CPUC asserts that “[a] certification or audit requirement would make clear to covered providers and intermediate providers the importance that the FCC attaches to rural call completion,” but, recognizing that “[s]uch a requirement could be burdensome and costly,” suggests a one-year reporting interval. We expect all entities subject to our rules to comply at all times, and our actions today demonstrate the importance to us of ensuring that calls are completed to all Americans. Additionally, numerous covered providers attest that they are committed to ensuring that rural calls are completed, and we expect them to live up to this commitment. We decline to impose what we agree would be a costly requirement absent a clear and sufficiently tangible (as opposed to rhetorical) benefit.

34. We further decline to require covered providers to file their documented monitoring procedures publicly with the Commission, as NTCA suggests. NTCA contends that because we expect covered providers to document their processes for prospective monitoring, a filing requirement “imposes no meaningful burden.” But such documentation in many cases is likely to reveal important technical, personnel, and commercial details about the covered provider's network and business operations—so public disclosure would impose meaningful burdens. To the extent that a covered provider would be able to

successfully obtain confidential treatment for part or all of its disclosure, it would mitigate the harm of disclosure but also would undercut any purported benefits. There is no countervailing benefit sufficient to warrant imposing this burden. We are able to obtain information on covered providers' monitoring practices in an investigation, so we do not need to impose a public disclosure requirement to effectively carry out our responsibilities. We therefore do not agree that a disclosure requirement would give covered providers “greater incentives to comply with procedures on file with the Commission.” We reiterate that we expect covered providers—and all regulated entities—to comply with our rules, and we are able to take enforcement action where they do not. Given the variance among covered providers' networks and operations and the flexibility our monitoring rule provides, we see little value to covered providers “know[ing] what individual carriers' procedures are and hav[ing] benchmarks against which subsequent performance can be measured”—each covered provider is able to adopt its own approach.

35. *Test Lines.* We decline to mandate that terminating rural carriers activate an automated test line. Recommended as an ATIS best practice to help resolve call completion issues, test lines “can expedite trouble resolution, avoid Customer Proprietary Network Information-related issues and exclude problems that may be specific to the called party's access and customer premises equipment arrangements.” However, the record is silent as to what added costs and logistical burdens this mandate would impose on rural carriers. Further, NTCA and WTA assert that test lines may generate false positives and have the ability to handle a limited number of test calls at any given time—sometimes only one. Verizon also contends that “[i]n [its] experience, there is no correlation between test-line results and rural call completion performance.” Because it is not clear whether the benefits of greater availability of test lines will outweigh any burden to rural LECs and subscribers, we decline to mandate activation of test lines at this time. However, we encourage, but do not require, covered providers to make use of test lines where available in monitoring intermediate provider performance, and we encourage rural carriers to make test lines available to covered providers.

36. *Trunk Augmentation.* We decline to adopt HD Tandem's proposal to require carriers to augment trunks used

for RCC paths when they reach a monthly utilization rate of 80%. We agree with Verizon that mandating “when and how carriers must purchase trunking capacity . . . contravene[s] the Commission's goal of ensuring covered providers have the flexibility they need.” Although HD Tandem asserts that “[w]hen trunk utilization exceeds 80%, the risk of dropped calls and poor quality calls dramatically increases” and that “[m]any tariffs require augmentation of trunks when they reach a utilization of 80% or more,” it does not substantiate these claims. We decline to impose a precise mandate absent more details justifying the threshold HD Tandem suggests. The record does not contain enough detail confirming the costs or benefits of such a requirement to allow us to weigh any added benefits against the burden upon network flexibility and potential monetary compliance cost.

37. At the same time, we agree that maintaining adequate capacity is an important part of monitoring rural call completion performance. The ATIS RCC Handbook recommends that “it is important for the original IXC to maintain sufficient termination facilities that it can complete its own traffic when an intermediate provider cannot complete the call” because “[g]iven the cost challenges” intermediate providers have “to maintain a lean network and the aggregation of loads from multiple IXCs they must handle, there is a greater chance that, on a moment-to-moment basis, [intermediate providers] will not have capacity to complete a call” and “[m]aintaining its own termination capacity gives an IXC flexibility to quickly stop using an intermediate provider should performance problems develop.” Thus, while we do not mandate trunk augmentation at a specific utilization threshold, maintaining adequate capacity is an important part of being able to monitor the performance of intermediate providers and meet the rural call completion monitoring rule we adopt today.

38. *Phase-In of the Monitoring Requirement.* We adopt NCTA's recommendation that we allow a transition period before implementing the monitoring rule. We are persuaded that covered providers will need some time to evaluate and renegotiate contracts with intermediate providers in order to comply with the monitoring requirement. We reject NCTA's argument that such a transition period should last twelve months, however; the monitoring requirement addresses the ongoing call completion problems faced by rural Americans, and delay only

postpones when rural Americans will see the fruit of this solution. A six-month transition period will suffice to address NCTA's concerns while not unduly delaying the effective date of the monitoring rule. The monitoring rule therefore will go into effect six months from the date that this Order is released by the Commission, or 30 days after publication of a summary of this Order in the **Federal Register**, whichever is later. NCTA suggests that the monitoring requirement will be subject to approval by the Office of Management and Budget (OMB), and that its effective date should be tied to "notice that the rule[has] been approved by [OMB]." Because the monitoring requirement does not require approval under the Paperwork Reduction Act, we do not tie the effective date to OMB approval.

39. *Review of Rules Adopted in this Report and Order.* It is important for us to continue to periodically reexamine the effectiveness of our rural call completion rules. We therefore direct the Bureau, in conjunction with the Enforcement Bureau and the Consumer and Governmental Affairs Bureau, to review the progress that has been made in addressing rural call completion issues, and the effectiveness of our rules, within two years of the effective date of the rules. We direct the Bureau to publish its findings in a report that will be made available for public comment. We expect this report to benefit the Commission in its ongoing work to address rural call completion issues.

40. We decline to adopt NTCA's recommendation that "the rules adopted in this order sunset after three years and revert to the rules [previously] in effect, absent a finding based on evidence and analysis that the new framework as adopted addresses rural call completion problems." NTCA does not provide any examples of the Commission making use of this kind of 'sunset and reversion' approach to rulemaking. The rules we adopt today are tailored to provide a more efficient and effective means to address persistent rural call completion issues than our prior rules. And, as outlined in the Further Notice, we propose and seek comment on further modifications to our rural call completion rules, including those we adopt today, as we work to implement the RCC Act. Imposing an arbitrary expiration date on these rules is therefore unnecessary and counterproductive, as it could undermine their overall effectiveness.

5. Definitions

41. We retain the Commission's current definition of "covered provider," adopted in the *RCC Order*. We agree with the CPUC that this scope is "a reasonable trade-off between covering an adequate number of calls without placing a burden on those smaller carriers that would be least able to bear it." We note that, regardless of size, all carriers are subject to the statutory requirements of the Act, including sections 201, 202, and 217, 47 U.S.C. 201, 202, 217, and that VoIP providers are prohibited from blocking calls to or from the PSTN. No commenter to the *RCC 2nd FNPRM* opposes this definition.

42. Because we require each covered provider to monitor calls to rural incumbent LECs and competitive LECs, the definition of "rural incumbent LECs" we proposed in the *RCC 2nd FNPRM* is no longer relevant. We proposed defining a "rural incumbent LEC" as an incumbent LEC that is a rural telephone company, as those terms are defined in 47 CFR 51.5. We instead employ the term "rural telephone company," as that term is defined in 47 CFR 51.5. This term reaches the same scope of rural incumbent LECs captured by our proposed definition, and it also includes rural competitive LECs. We clarify that a determination that a competitive LEC meets the definition of a "rural telephone company" for purposes of our rural call completion rules has no bearing on whether a competitive LEC meets the definition of a "rural CLEC" for purposes of section 61.26 of the Commission's rules. We decline to exclude LECs engaged in access stimulation, as defined in 47 CFR 61.3(bbb), from the definition of rural telephone company for purposes of our rural call completion rules. AT&T does not adequately explain how the monitoring rule we adopt today "benefit[s] access stimulation LECs" or how including all rural telephone companies within the scope of the rule "does not service consumers' best interests." AT&T's filing (submitted just before the proceeding closed for filings) did not attempt to quantify or otherwise specify the benefits that would accrue to access stimulation LECs or the extent to which those purported benefits would outweigh the benefits of broadly defining "rural telephone company" for purposes of this proceeding. Based on this incomplete record, we do not have enough information to decide the issue raised by AT&T at this time.

43. While we retain the definition of "intermediate provider" in our rules at present, the RCC Act definition of

"intermediate provider" differs from the definition in our rules. Accordingly, in the *Third Further Notice of Proposed Rulemaking*, we propose to adopt that revised definition.

6. Legal Authority

44. The Commission has previously articulated its direct and ancillary authority to adopt rules addressing rural call completion issues, and we rely on that same authority here. In addition to the authority previously articulated, section 217 of the Act provides additional authority to mandate that covered provider carriers monitor the overall intermediate provider call path and correct any identified intermediate provider performance problems. Intermediate providers in the call path "act for" the covered provider; therefore, without holding covered providers responsible for the acts or omissions they initiate to and through intermediate providers, we cannot ensure that covered provider carriers are fulfilling their statutory duties.

B. Reporting Requirement

1. Removal of the Reporting Requirement

45. *Discussion.* We eliminate the reporting requirement for covered providers. We conclude that the existing reporting rules are burdensome on covered providers, while the resulting Form 480 reports are of limited utility to us in discovering the source of rural call completion problems. We agree with CTIA that the rules "impose[] significant costs on covered providers," and that compliance costs can "divert 'funds that covered providers could otherwise use to deploy broadband service, improve network quality, or offer richer service plans.'" We agree with the Bureau's negative evaluation of the reporting requirement and, based on the shortcomings it identified, reject the view that we should retain the reporting requirements as-is.

46. We find that the burdens associated with supplementing or replacing the existing reporting requirements are likely to outweigh any benefits to the data collection. We therefore decline to amend our reporting rule. We agree with the Bureau's conclusion in the RCC Data Report and commenters who suggest that addressing the ongoing data quality issues associated with Form 480 by supplementing or replacing the data collection rules with new requirements is likely to be prohibitively burdensome on covered providers, while potentially providing little value over the current regime. The record supports the

conclusion that standardization of the data collection is likely to be prohibitively costly while yielding an uncertain benefit. As Verizon explains, the “significant resources providers expended to develop and build data systems to comply with the 2013 *RCC Order* are now sunk costs” and we “should not force providers to incur a second round of burdens and costs to comply with modified or new recording, retention, and reporting obligations that likely would be as ineffective as their predecessors.” For these reasons, we also decline to supplement or replace our existing recording and retention rules with any new data collection requirements.

47. The monitoring rule we adopt will be more effective in promoting covered provider compliance and facilitating enforcement where needed than the reporting rules because the monitoring rule imposes a direct, substantive obligation and because the reporting rules have proven to be not as effective as originally hoped. Furthermore, as the Commission has found previously, rural call completion problems are likely to be addressed especially effectively by ongoing intercarrier compensation reform, a conclusion that is supported by the record. Removal of the reporting requirement will provide covered providers with prompt relief by obviating the need to spend time and resources compiling and filing reports that would otherwise be due to the Commission on May 1, 2018. Because we eliminate the reporting requirement, we eliminate section 64.2109, which provided that “[p]roviders subject to the reporting requirements in § 64.2105 of this chapter may make requests for Commission nondisclosure of the data submitted under § 0.459 of this chapter by so indicating on the report at the time that the data are submitted” and that “[t]he Chief of the Wireline Competition Bureau will release information to states upon request, if the states are able to maintain the confidentiality of this information.” We will continue to treat reports already submitted to the Commission in accordance with the prior rule, *i.e.*, we will honor confidentiality requests to the same extent as previously and will release information previously provided to the Commission to states that have requested access and are able to maintain the confidentiality of the information.

48. *Recording and Retention.* We choose to proceed incrementally and do not at this time eliminate the recording and retention rules. As we implement the rules we adopt today and as we continue to pursue more effective

solutions to rural call completion problems through further intercarrier compensation reform and RCC Act implementation, we anticipate that the value of the recording and retention rules will diminish. These reforms include both the reductions in terminating switched access rates established by the *USF/ICC Transformation Order* and further intercarrier compensation reform that we anticipate undertaking. We seek comment in today’s *Third Further Notice of Proposed Rulemaking* on whether to eliminate those requirements upon implementation of the RCC Act. Although we retain the recording and retention requirements at present, we emphatically reject the view that eliminating some or all of the data collection “send[s] a signal” that rural call completion problems are “a low priority for the Commission.” The rules we adopt today, our efforts to implement the RCC Act, and our intercarrier compensation reform efforts show that ensuring calls are completed to all Americans is a top priority for us.

2. Safe Harbor

49. In the *RCC Order*, the Commission instituted a safe harbor provision reducing the recording, retention, and reporting requirements. Specifically, the safe harbor qualifications require that a covered provider have: (1) No more than one additional intermediate provider in call path before termination; (2) a non-disclosure agreement with intermediate providers allowing the covered provider to identify its intermediates to the Commission and to rural LECs affected by intermediate provider performance; and (3) a process in place to monitor intermediate provider performance. Additionally, the RCC Act contains an exemption from its quality of service requirements for covered providers that meet our safe harbor requirements.

50. Following adoption of this Order, covered providers qualifying for the safe harbor will continue to be subject to reduced recording and retention requirements. And, upon our adoption of rules implementing the RCC Act, covered providers who qualify for the safe harbor provisions of section 64.2107(a) will also be exempt from the quality of service requirements of the RCC Act, per new section 262(h) of the Act. Retaining these safe harbor provisions will maintain the incentive for covered providers’ to engage in call routing to rural areas that minimizes the use of multiple intermediate providers, a practice that contributes to rural call completion issues. We remind covered providers that safe harbor status can be revoked at any time by the Commission

for covered providers that violate Commission rules, or are found to no longer be in compliance with the safe harbor provisions.

51. We decline to institute the amendments to the safe harbor qualifications suggested by Verizon, including allowing the “*de minimis*” use of a third intermediate provider during network congestion or outages, and clarifying that the safe harbor applies only to rural LEC destined traffic. We find Verizon’s suggestion that we limit the safe-harbor certification to traffic destined to rural LECs contrary to the objective of the safe harbor, which is intended to discourage the use of multiple different intermediate providers. Verizon suggests that we create a presumption that use of an additional intermediate provider for a small percentage (*e.g.*, not more than 3%) of all calls is part of a “bona fide network overflow arrangement” and would not invalidate a covered provider’s safe-harbor status. Verizon’s proposed threshold is based on internal review of its overflow traffic on a single day in December 2013, on which it observed that “only 0.1% of its traffic on that day went to its overflow provider for termination.” However, Verizon does not explain how the findings of its single-day study support a 3% *de minimis* threshold for overflow routing applicable to all covered providers, and it acknowledges that other providers “may have different arrangements for overflow.” We therefore reject this proposal. Furthermore, codifying these changes to our rules would require the Commission to either set a threshold for congestion, or allow providers to set it themselves, which could undermine the purpose of the safe harbor regime we have established. Allowing covered providers to set their own thresholds could result in a wide range of varying standards that would effectively render the safe harbor meaningless. Alternatively, the Commission setting a congestion threshold would raise the same problems as setting performance thresholds with respect to the monitoring requirement we adopt.

II. Final Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice of Proposed Rulemaking (RCC 2nd FNRPM)* for the Rural Call Completion proceeding. The Commission sought written public comment on the proposals in the *RCC 2nd FNRPM*, including comment on the IRFA. The Commission received no

comments on the IRFA. Because the Commission amends its rules in this *Order*, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rules

53. In this *Order*, we revise our rules to better address ongoing problems in the completion of long-distance telephone calls to rural areas. Specifically, we require covered providers to monitor intermediate provider performance, and eliminate the data reporting requirements created by the Commission in 2013. The requirements we adopt today will be more effective and less burdensome than the prior reporting regime established in the *RCC Order*.

54. All Americans should have confidence that when a call is made to them, they will receive it. But for Americans living in rural or remote areas of the country, too often that is not the case. Call completion problems manifest in a variety of ways—for example, callers may experience false ring tones or busy signals while the called party's phone may never ring at all; or when a call goes through, one or both parties to a call may be unable to hear the other; or the caller ID may show an inaccurate number; or calls to rural numbers may be significantly delayed. Regardless of how the caller and/or called party experiences a call completion problem, the failures have serious repercussions, imposing needless economic and personal costs, and potentially threatening public safety in local communities. We continue to conclude that a key reason for rural call completion issues is that calls to rural areas are often handled by numerous different providers, and that providers' incentives to minimize their intercarrier compensation payments contributes to problems involving carriers blocking or degrading traffic to rural areas.

55. The actions that we take today demonstrate and reflect our continued commitment to solve the ongoing problems in the completion of long-distance telephone calls to rural areas using a multi-faceted approach requiring diverse solutions and aggressive action by all participants in the call completion process. Given our experience collecting and analyzing rural call completion data and addressing rural call completion problems identified by rural consumers, we reorient our existing rural call completion rules to better reflect strategies that have worked to reduce rural call completion problems while at the same time reducing the overall

burden of our rules on providers. Our new measures are informed by the record in this proceeding and our investigations of entities that have failed to ensure that calls are appropriately routed and delivered to rural areas.

56. First, we adopt a new rule requiring “covered providers”—entities that select the initial long-distance route for a large number of lines—to monitor the performance of the “intermediate providers” to which they hand off calls. By holding a central party responsible for call completion issues, it will be less likely for calls to “fall through the cracks” along a lengthy chain of intermediate providers. The monitoring rule encourages covered providers to ensure that calls are completed, assigns clear responsibility for call completion issues, and enhances our ability to take enforcement action where needed. To facilitate communication about problems that arise, we also require covered providers to make available a point of contact to address rural call completion issues. Our balanced approach ensures that covered providers exercise responsibility for rural call completion without imposing an unduly rigid or burdensome mandate; in addition, it seeks to expedite both the identification and resolution of call completion issues if and when they arise.

57. Next, we eliminate the reporting requirement for covered providers established in 2013 in the *RCC Order*. We conclude that the existing reporting rules are burdensome on covered providers, while the resulting Form 480 reports are of limited utility to us in discovering the source of rural call completion problems and a pathway to their resolution. We further conclude that the monitoring rule we adopt will be more effective than the less-effective-than-hoped reporting obligation because it imposes a direct, substantive obligation.

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

58. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

59. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

60. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *RCC 2nd FNPRM*. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

61. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

62. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

63. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and

12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

64. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

65. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

66. *Incumbent Local Exchange Carriers (incumbent LECs)*. Neither the Commission nor the SBA has developed

a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

67. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

68. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for

Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

69. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

70. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such

a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

71. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the *RCC 2nd FNRPM*.

72. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

73. *Wireless Telecommunications Carriers (except Satellite).* This industry

comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees. Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

74. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions.

75. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

76. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in

operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g. limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

77. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

78. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all

but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

79. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows: “This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry.” The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million. Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

80. In this *Order*, we revise our rules to better address ongoing problems in the completion of long-distance telephone calls to rural areas. Specifically, we require covered providers to actively monitor intermediate provider performance, and eliminate the data reporting requirements created by the Commission in 2013.

81. Regarding our monitoring requirements, we require covered providers to monitor the performance of

each intermediate provider with which they contract. Required monitoring entails both prospective evaluation to prevent problems and retrospective investigation of any problems that arise. We also require covered providers take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider. Additionally, we specify that covered providers must publish point of contact information for rural call completion issues.

82. Regarding our rural call completion recording, retention, and reporting rules, we eliminate the data reporting requirement. The safe harbor provisions established in the *RCC Order* will remain in effect; covered providers qualifying for the safe harbor will continue to be exempt from the remaining recording and retention requirements.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

83. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

84. The *Order* adopts reforms that are likely to reduce burdens on covered providers, including small entities. As described in the *Order*, in adopting these reforms, we have sought comment on the impact of our rule changes on smaller providers, and considered significant alternatives. Regarding our intermediate provider monitoring requirement for covered providers, we considered, but declined to adopt, a mandate that covered providers adhere to the standards and best practices outlined in the *ATIS Inter-carrier Call Completion/Call Termination Handbook* (ATIS RCC Handbook), finding that mandating the ATIS RCC Handbook best practices could have a chilling effect on future industry cooperation to develop solutions to industry problems, and that covered providers should have the flexibility to determine the standards

and methods best suited to their individual networks.

85. Under the monitoring requirement, covered providers must exercise responsibility for the entire intermediate provider call path to help ensure that calls to rural areas are completed. Because “covered providers” excludes entities with low call volumes, we expect that covered providers are of sufficient size to negotiate appropriate provisions with any intermediate providers with which they contract. As stated above, although we encourage limiting the use of intermediate providers, we do not impose a rigid cap on the number of intermediate providers. Similarly, we do not mandate that covered providers must contract with all intermediate providers in the call path. In adopting this approach, we considered, but declined to adopt, a requirement that covered providers directly monitor the performance of intermediate providers with which they lack a contractual relationship. Because covered providers must monitor the performance of intermediate providers with which they contract and must ensure that those covered providers take appropriate measures to ensure calls are completed, we find mandating direct covered provider monitoring of the entire call chain unnecessarily burdensome. Regarding our requirement that covered providers provide and maintain point of contact information for rural call completion issues, we find that this is a low-cost measure to facilitate industry collaboration to address call completion issues.

86. Further, we considered, but declined to adopt, specific performance targets or benchmarks for call answer rates, call completion rates, or any other performance metric, or certification or audit requirements in conjunction with the monitoring rule, finding the burdens associated with these approaches to outweigh their likely benefits. For the same reason, after consideration, we declined to adopt a mandate that terminating rural carriers activate an automated test line, or augment trunks used for RCC paths when they reach a monthly utilization rate of 80%.

87. Regarding our recording, retention, and reporting requirements, we find that eliminating the data reporting requirements created by the *RCC Order* is likely to offer a better and more efficient balance between our need for information pertaining to rural call completion problems and the burdens such data collection efforts place on service providers, including any affected small entities. In adopting this approach, we considered, but declined

to adopt, a modified or supplementary data collection requirement, finding that the burdens of such an approach on covered providers would outweigh the likely benefits.

G. Report to Congress

88. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

89. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules, as proposed, addressed in this Second Report and Order. The FRFA is set forth above. The Commission will send a copy of this Second Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

B. Paperwork Reduction Act

90. This *Second Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA, 44 U.S.C. 3507. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

91. In this present document, we require covered providers to provide and maintain contact information on their websites a telephone number and email address for the express purpose of receiving and responding promptly to any rural call completion issues. We have assessed the effects of this rule, and find that any burden on small businesses will be minimal because this

is a low-cost measure to facilitate industry collaboration to address call completion issues.

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

C. Contact Person

93. For further information about this proceeding, please contact Zach Ross, FCC Wireline Competition Bureau, Competition Policy Division, Room 5–C211, 445 12th Street SW, Washington, DC 20554, at (202) 418–1033 or Zachary.Ross@fcc.gov.

IV. Ordering Clauses

94. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 403, this *Second Report and Order* is adopted.

95. *It is further ordered* that Part 64 of the Commission's rules are amended as set forth in Appendix B.

96. *It is further ordered* that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), this *Second Report and Order* shall be effective 30 days after publication of a summary in the **Federal Register**, except for the addition of section 64.2113 to the Commission's rules, which will become effective upon announcement in the **Federal Register** of Office of Management and Budget (OMB) approval and an effective date of the rules.

97. *It is further ordered* that the Commission shall send a copy of this *Second Report and Order* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

98. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons set forth above, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. Revise the authority citation for part 64 to read as follows:

Authority: 47 U.S.C. 154, 202, 225, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, unless otherwise noted.

■ 2. Revise the heading of Subpart V to read as follows:

Subpart V—Rural Call Completion

■ 3. Amend § 64.2101 by adding a definition of “Rural telephone company” in alphabetical order to read as follows:

§ 64.2101 Definitions.

* * * * *

Rural telephone company. The term “rural telephone company” shall have the same meaning as in § 51.5 of this chapter.

§ 64.2105 [Removed and Reserved]

■ 4. Remove and reserve § 64.2105.

■ 5. Amend § 64.2107 as follows:

■ a. Revise the section heading;

■ b. Revise the first sentence of paragraph (a)(1);

■ c. Remove paragraph (c);

■ d. Redesignate paragraph (d) as new paragraph (c), to

The revision reads as follows:

§ 64.2107 Reduced recording and retention requirements for qualifying providers under the Safe Harbor.

(a)(1) A covered provider may reduce its recording and retention requirements under § 64.2103 if it files one of the following certifications, signed by an officer or director of the covered provider regarding the accuracy and completeness of the information provided, in WC Docket No. 13–39.

* * * * *

§ 64.2109 [Removed and Reserved]

■ 6. Remove and reserve § 64.2109.

■ 7. Add § 64.2111 to subpart V to read as follows:

§ 64.2111 Covered provider rural call completion practices.

For each intermediate provider with which it contracts, a covered provider shall:

(a) Monitor the intermediate provider's performance in the completion of call attempts to rural telephone companies from subscriber lines for which the covered provider makes the initial long-distance call path choice; and

(b) Based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing the intermediate provider from a particular route after sustained inadequate performance.

■ 8. Add § 64.2113 to subpart V to read as follows:

§ 64.2113 Covered provider point of contact.

Covered providers shall make publicly available contact information for the receipt and handling of rural call completion issues. Covered providers must designate a telephone number and email address for the express purpose of receiving and responding to any rural call completion issues. Covered providers shall include this information on their websites, and the required contact information must be easy to find and use. Covered providers shall keep this information current and update it to reflect any changes within ten (10) business days. Covered providers shall ensure that any staff reachable through this contact information has the technical capability to promptly respond to and address rural call completion issues. Covered providers must respond to communications regarding rural call completion issues via the contact information required under this rule as soon as reasonably practicable and, under ordinary circumstances, within a single business day.

[FR Doc. 2018-09969 Filed 5-9-18; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 222**

[Docket No. 170601529-8177-0]

RIN 0648-BG90

2018 Annual Determination To Implement the Sea Turtle Observer Requirement

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final Annual Determination (AD) for 2018, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take fisheries observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes and to implement the prohibition against sea turtle takes. Fisheries identified on the 2018 AD (see Table 1) will be eligible to carry observers as of the effective date of this rulemaking, and will remain on the AD for a five-year period until December 31, 2022.

DATES: Effective June 9, 2018.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Sara Wissmann, Office of Protected Resources, (301) 427-8402; Ellen Keane, Greater Atlantic Region, (978) 282-8476; Dennis Klemm, Southeast Region, (727) 824-5312; Dan Lawson, West Coast Region, (206) 526-4740; Irene Kelly, Pacific Islands Region, (808) 725-5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1 (800) 877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:**Availability of Published Materials**

Information regarding the Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) may be obtained at <http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html> or from

any NMFS Regional Office at the addresses listed below:

- NMFS, Greater Atlantic Region, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, Protected Resources Division, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, West Coast Region, Protected Resources Division, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*; North Pacific distinct population segment), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*; Northwest Atlantic distinct population segment), green (*Chelonia mydas*; North Atlantic, South Atlantic, and East Pacific distinct population segments), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (defined to include harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA provides for civil and criminal penalties for anyone who violates the Act or a regulation issued to implement the Act. NMFS may grant exceptions to

the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine that the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to implement the take prohibitions and prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176; August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in enforcement action.

NMFS will pay the direct costs for vessels to carry observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be required to carry observers, if requested, for a period of five years without further action by NMFS. This will enable NMFS to develop an appropriate sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to implement ESA take prohibitions and conserve turtles.

Process for Developing an Annual Determination

Pursuant to 50 CFR 222.402, NOAA's Assistant Administrator for Fisheries (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, develops a proposed AD identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provides an opportunity for public comment on any proposed AD. The best available scientific, commercial, or other

information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; and/or qualitative data from logbooks or fisher reports informs the AD. Specifically, this AD is based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

For the 2018 AD, NMFS used the most recent version of the annually published Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) as the comprehensive list of commercial fisheries for consideration. The LOF includes all known state and Federal commercial fisheries that occur in U.S. waters and on the high seas. In preparing an AD, however, we do not rely on the three-part MMPA LOF classification scheme. In addition, unlike the LOF, an AD may include recreational fisheries likely to interact with sea turtles based on the best available information.

NMFS consulted with appropriate state and Federal fisheries officials to identify which fisheries, both commercial and recreational, to consider. NMFS carefully considered all recommendations and information available for developing the proposed AD. This is not an exhaustive or comprehensive list of all fisheries with documented or suspected takes of sea turtles. For other fisheries, NMFS may already be addressing incidental take through another mechanism (e.g., rulemaking to implement modifications to fishing gear and/or practices), may be observing the fishery under a separate statutory authority, or will consider including them in future ADs based on the four previously noted criteria (50 CFR 222.402(a)). The fisheries not included on the 2018 AD may still be observed under a different authority (e.g., MMPA, Magnuson-Stevens Fishery Conservation and Management Act (MSA)) than the ESA, if applicable.

Notice of the final AD will publish in the **Federal Register** and individuals permitted for each fishery identified will receive a written notification. NMFS will also notify state agencies. Once included in the final AD, a fishery

will remain eligible for observer coverage for a period of five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines a need for more than five years to obtain sufficient scientific data, NMFS will include the fishery in the proposed AD again prior to the end of the fifth year.

The first AD was published in 2010 and identified 19 fisheries that were required to carry observers for a period of five years, through December 31, 2014, if requested by NMFS. On the 2015 AD, NMFS identified 14 fisheries, 11 were previously listed and 3 were newly listed. The 14 fisheries are currently required to carry observers for a period of five years, through December 31, 2019. The fisheries currently listed on the AD can be found at <http://www.nmfs.noaa.gov/pr/species/turtles/observers.htm>.

Implementation of Observer Coverage in a Fishery Listed on the 2018 AD

As part of the 2018 AD, NMFS has included, to the extent practicable, information on the fisheries and gear types to observe, geographic and seasonal scope of coverage, and any other relevant information. NMFS intends to monitor the fisheries and anticipates that it will have the funds to do so. After publication of a final determination, a 30-day delay in effective date for implementing observer coverage will follow, except for those fisheries where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective without a 30-day delay. For the 2018 AD, the AA has not made this determination, therefore, this rule is effective 30 days after publication of this notice, see **DATES**.

The design of any observer program for fisheries identified through the AD process, including how observers will be allocated to individual vessels, will vary among fisheries, fishing sectors, gear types, and geographic regions and will ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. During the program design, NMFS will follow the standards below for distributing and placing observers among fisheries identified in the AD and among vessels in those fisheries:

(1) The requirement to obtain the best available scientific information;

(2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to

inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Vessels subject to observer coverage under the AD must comply with observer safety requirements specified in 50 CFR 600.725 and 600.746. Specifically, 50 CFR 600.746(c) requires vessels subject to observer coverage to provide adequate and safe conditions for carrying an observer and conditions that allow for operation of normal observer functions. To provide such conditions, a vessel must comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) and possess a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination decal or a USCG certificate of examination. A vessel that fails to meet these requirements at the time an observer is to be deployed is prohibited from fishing (50 CFR 600.746(f)), unless NMFS determines that an alternative platform (e.g., a second vessel) may be used or the vessel is not required to take an observer under 50 CFR 222.404. All fishers on a vessel must cooperate in the operation of observer functions. Observer programs designed or carried out in accordance with 50 CFR 222.404 are consistent with existing NOAA observer policies and applicable federal regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), and Observer Health and Safety regulations (50 CFR part 600).

Again, note that fisheries not included on the 2018 AD may still be observed under statutory authority other than the ESA (e.g., MMPA, MSA). Additional information on observer programs in commercial fisheries is on the NMFS National Observer Program's website: <http://www.st.nmfs.noaa.gov/observer-home/>; links to individual regional observer programs are also on this website.

Sea Turtle Distribution

The sea turtle distribution and ecological use of habitats that leads to the overlap of sea turtles and fisheries is critical information that NMFS uses to inform the development of the final AD. A summary of this information was included in the proposed AD (October 19, 2017, 82 FR 48674) and was considered in the development of the final 2018 AD.

Comments and Responses

NMFS received seventeen comments on the proposed rule from members of

the public, Oceana, Inc., Turtle Island Restoration Network, Omega Protein, Inc., Garden State Seafood Association, and the State of Maryland. Many commenters expressed general support of the rule or fishery observer programs, and others provided suggestions and requests for the inclusion or exclusion of particular fisheries. All substantive comments are specifically addressed below. Comments on issues outside the scope of the AD were noted, but are not responded to in this final rule.

General Comments

Comment 1: Eleven commenters expressed general support for the rule.

Response: NMFS agrees and has included two fisheries on the 2018 AD to allow for increased data gathering on sea turtle bycatch in order to accomplish the purposes of the rule.

Comment 2: A commenter requested clarification on the purpose and role of including a fishery on the AD if the fishery is already eligible to carry observers under the MMPA or other authority. The commenter cites a comment on the 2015 AD where NMFS indicated that the Hawaii Deep-set longline fishery was already eligible to carry observers per the MMPA Category I classification; and, therefore, sufficient coverage would be provided and sea turtle interactions would be documented if they occurred.

Response: The purpose of this requirement is to implement ESA sections 9 and 4(d), which prohibit the incidental take of endangered and threatened sea turtles, respectively. In order to do so, we must learn more about sea turtle-fishery interactions in the identified fisheries to have information necessary to issue exemptions, if warranted, to the take prohibitions, consistent with ESA sections 4(d), 7 and 10.

The MMPA LOF fishery classifications do not directly influence the AD. Existing observer coverage, regardless of the mandate (i.e., MMPA or MSA) is a consideration when we evaluate any fishery against the AD inclusion criteria. The overlap in seasonal and geographic distribution of sea turtles compared to the existing observation protocol for a given fishery, will help us to determine if the existing observer coverage is adequate to observe sea turtle interactions. It is possible that a Category I fishery is observed for marine mammals, but the existing observations are not sufficient to collect information on sea turtle interactions in a given season or geographic area. In this case inclusion of the fishery on the AD may be warranted to specifically expand coverage to times and areas

when sea turtles may overlap with fishing effort. If the opposite is true, and coverage is sufficient for sea turtles, then NMFS may determine that inclusion on the AD is not warranted.

Comments on Gillnet Fisheries

Comment 3: The Maryland Department of Natural Resources (MD DNR) expressed concern with including the mid-Atlantic gillnet fishery on the 2018 AD. This concern was based on several factors including that the Maryland coastal fishing fleet, which is part of the mid-Atlantic gillnet fishery, is small in scale and consists of some small gillnet vessels operating solely in state waters and state-managed fisheries. Small vessels would be unable to carry additional safety gear, observer personnel and their equipment, and many vessels would not meet the safety requirements for observer coverage. Additionally, MD DNR commented that the Code of Federal Regulations, 50 CFR 222.404(b), indicates that small vessels can receive an exemption if the facilities are too small for performing observer duties or are inadequate. They requested clarification on the process and criteria for requesting an exemption and the criteria for determining whether a vessel is unsafe for an observer.

Response: After considering all comments and concerns, including those from MD DNR, NMFS has decided to include the mid-Atlantic gillnet fishery on the 2018 AD. NMFS recognizes that state-permitted vessels, particularly those operating in coastal or inshore areas, are often smaller, but that does not preclude the need to observe bycatch in those fisheries. Vessel size is a consideration when developing any observer sampling protocol. When developing an observer program, NMFS would consider the size of the vessels in the fleet to help determine the most appropriate approach for observing the fishery. NMFS observer programs have successfully observed small vessels that operate in inshore gillnet fisheries in the past, and would apply similar considerations to small state-permitted vessels that operate as part of the mid-Atlantic gillnet fishery. In many cases, small vessels have been able to accommodate the addition of an observer for day trips, as long as the vessel meets the USCG safety standards that are required. Alternatively, NMFS may be able to observe through alternative platforms, where the observer is located on a separate vessel, if vessel size and safety are factors for a particular sector of this, or any other, fishery. Additionally, electronic monitoring technology may also be an

option for smaller vessels in a gillnet fishery.

Comment 4: MD DNR also commented that the vessels that participate in the mid-Atlantic gillnet fishery are already subject to observer coverage, and the addition of this fishery to the AD will result in excessive observer coverage to those vessels. MD DNR requests that the NMFS observer program design standards be factored into the selection process for the AD and requests clarification on the definition of inappropriate, excessive observer coverage.

Response: NMFS makes every attempt to avoid overburdening a particular fisherman or fishery. Days are allocated in proportion to fishing effort by time/area, and sampling protocols account for all observer authorities, including MSA, MMPA, and the ESA. All three authorities may be used for a single trip to minimize duplication. Above, we identified the standards NMFS will follow for distributing and placing observers among fisheries identified in the AD and among vessels in those fisheries. These standards include the need to minimize costs and avoid duplication, where practicable. In designing a study, NMFS would identify the pool of vessels that may be observed and consider all the authorities under which these vessels may be observed. This would include coordinating with states, as appropriate, on coverage that may be implemented directly by the state (*i.e.* outside of NMFS authorities).

As stated in the preamble, "Sampling designs for all NMFS observer programs are developed to provide statistically valid information and to produce results that will contribute to the body of best available science. The sampling design will vary depending on many factors, including the fishery to be observed, the spatial and temporal variability in the fishery and species observed, and the overall goals of the observer program. Once a fishery is selected for observer coverage, a sampling design will be developed to yield statistically valid results." [72 FR 43176, August 3, 2007].

Comment 5: Garden State Seafood Association stated they do not support including the mid-Atlantic gillnet on the 2018 AD and requests that the Agency analyze the observer information by mesh size, by directed fishery, and perhaps by region to make a determination. The commenter requests that NMFS not treat all gillnet fisheries the same. Additionally, they provided data on observed gillnet trips from New Jersey fishing vessels and stated that not all gillnet fisheries pose the same risk.

Response: NMFS acknowledges that not all gillnet fisheries pose the same risk. To determine risk of an interaction with a sea turtle we consider factors such as, mesh size, water temperature, density of habitat use by sea turtles. Murray (2009, 2013) found that loggerhead interaction rates in mid-Atlantic gillnet gear are associated with latitude, sea surface temperature, and mesh size.

NMFS would also like to clarify that the universe of commercial fisheries considered for the AD (50 CFR 222.402) is based on the MMPA LOF. If the LOF defines a fishery based on broad gear type, NMFS must use that broad gear type on the AD. The LOF defines the scope and geographic area of the mid-Atlantic gillnet fishery, and under the AD, we are unable to isolate specific sections of the fishery for inclusion or exclusion. NMFS must annually reexamine the LOF and provide the opportunity for public comment. NMFS will consider any proposals for changes to the LOF submitted during the annual public comment process. However, even without changes to the LOF, NMFS may determine that only portions of a fishery will be observed using AD authority. For example, while NMFS has decided to include the mid-Atlantic gillnet fishery on the 2018 AD, NMFS is most interested in increasing coverage in nearshore coastal waters of the mid-Atlantic and Delaware Bay.

When evaluating a fishery for inclusion on the AD, we look at all observer data available for the fishery. NMFS notes the specific data provided on gillnet observations that have occurred in New Jersey, but as noted above we are unable to isolate one state or section of the mid-Atlantic gillnet fishery for either inclusion or exclusion from the AD. However, NMFS considers this information when determining the sampling protocol.

Comment 6: Turtle Island Restoration Network (TIRN) submitted a comment requesting that NMFS maintain adequate coverage for California thresher shark/swordfish drift gillnet fishery, stating that there is little understanding of sea turtle bycatch on trips with no observers and failure to observe an interaction does not mean that interactions are no longer occurring.

Response: The California thresher shark/swordfish drift gillnet fishery is currently observed under NMFS' MMPA and MSA authorities. The comment regarding maintaining coverage has been noted.

Comments on Seine/Weir/Pound Net Fisheries

Comment 7: Omega Protein submitted comments to clarify the participation and target species for the menhaden purse seine fishery. The commenter indicated that while the **Federal Register** notice states that there are 40 to 42 menhaden purse seine vessels operating in the Gulf of Mexico, in fact, the total number of such vessels is only 28 vessels. Information on the Atlantic fishery was also provided but is outside the scope of this action. Additionally, the notice stated that the Gulf menhaden fishery targets thread herring. The commenter indicates that is not correct, and the fishery solely targets menhaden.

Response: NMFS thanks you for your comment and for providing this information. The participant number included in the AD is based on the most recent LOF. NMFS will consider this information in a future LOF.

Comments on AD Evaluation Criteria and Data

Comment 8: Garden State Seafood Association commented that while NMFS did not use stranding data for the 2018 AD, NMFS could consider stranding data when developing the AD. If NMFS were to consider strandings, they do not believe this is an appropriate method to use for AD evaluation, unless a stranding is proven to be a result of a fishery interaction.

Response: NMFS would like to clarify that we do evaluate stranding data and trends when developing the AD each year, and this was also the case for the 2018 AD. Stranding data are one of many sources of data that are used when a fishery is recommended for inclusion on the AD. It is not the only factor in determining if a fishery should be included on the AD, rather it is considered within the full scope of available data. Stranding data are monitored throughout the year for changes in patterns and trends. While these data were evaluated for the 2018 AD, it was not a factor for listing the mid-Atlantic gillnet or the Gulf of Mexico menhaden purse seine fisheries. As described in the proposed rule, these fisheries met the criteria that the fishery operates in the same waters and times as sea turtles are present, takes have been well documented in this fishery, and NMFS intends to monitor this fishery.

NMFS would also like to clarify how stranding data may be attributed to a particular fishery. Proximity to a particular fishery or fisheries in the area is not the only factor considered, rather

it is one of many pieces of information that are used by veterinarians and stranding staff when determining a cause of stranding. Body condition, decomposition, lacerations and/or other marks on the carcass, water temperature, currents, and harmful algal blooms are examples of data that may be considered when determining the cause of a stranding.

Comments on Observer Coverage and Protocols

Comment 9: Garden State Seafood Association requests NMFS clearly articulate how an interaction or event can be classified as a condition of “unknown” in the observer database and how a “decomposed” turtle can be attributed to a particular fishery.

Response: This comment is outside the scope of the AD rulemaking. NMFS would like to provide general clarification on the two questions posed by the commenter. Observer protocols provide clear guidance to the observer on how to classify an interaction and what information to record. At times, the observer is unable to determine the condition (*e.g.*, alive, fresh dead, moderately decomposed) of the animal. For example, when observing gillnet fisheries, the observer may be able to see that there is a turtle in the gillnet, but when the gillnet is hauled back the animal falls out of the net before the observer is able to assess the animal. In this instance, the interaction may be recorded as condition unknown. The animal may also not be identified to species.

Decomposition classifications (*e.g.*, fresh dead, moderately decomposed, advanced decomposition) are made by the observer, but the observer would not make a determination on whether a decomposed carcass should be attributed to a particular fishery. Rather, the latter is determined during the post-interaction mortality determination, which considers the type of gear (mobile or fixed). For mobile gears, moderately and severely decomposed animals are not typically attributed to the haul on which they were caught and, thus, are not attributed to that fishery. For fixed gear, NMFS further evaluates the animal and its capture conditions, considering factors such as but not limited to the animal's condition, water temperature, and soak times to determine if the animal's death was related to the fishery interaction.

Comment 10: Turtle Island Restoration Network also commented on Exempted Fishing Permits (EFP) that are under review for the West Coast longline fishery and recommends 100%

observer coverage for any EFPs issued, as required by the AD.

Response: Exempted Fishing Permits are outside the scope of the AD. NMFS would like to clarify that 100% observer coverage is not required by the AD. The AD does not prescribe a specific level of observer coverage for any fishery; rather it identifies fisheries about which NMFS intends to collect additional information. As described above, the sampling design of any observer program for fisheries identified through the AD process is determined on a fishery by fishery basis.

Comments With Recommendations for Fisheries To Include on the 2018 AD

Comment 11: One commenter proposes including the Hawaii deep-set longline fishery to the AD because the fishery is categorized as a Category I Fishery, longlines are associated with bycatch, and olive ridley sea turtles are present where the fishery operates. The commenter also indicates that a Category I classification under the LOF is justification alone for inclusion on the AD.

Response: NMFS acknowledges that there are other fisheries, in addition to those listed on the AD, that may be a concern for sea turtles. The AD is not meant to be a comprehensive list of fisheries that interact with sea turtles or fisheries that require monitoring, but rather a focused list where NMFS can increase or adjust observer coverage with the goal of collecting information on sea turtle interactions with a fishery. As noted previously, NMFS has authority to observe federally-permitted vessels under the MSA and collect sea turtle bycatch information. The Hawaii deep-set longline fishery already carries observers under MSA authority, which is currently sufficient to collect information on sea turtles.

NMFS would also like to clarify that the AD is not directly related to the LOF classifications, and a specific classification of a fishery on the LOF does not alone justify inclusion on the AD. Please see the response to Comments 3 and 7 for additional detail.

Comment 12: Turtle Island Restoration Network requested that the Gulf of Mexico “recreational fishery” including the Gulf of Mexico portion of the Category III Atlantic/Gulf of Mexico/Caribbean charter boat fishery be included in the 2018 AD to more accurately determine the level of interactions with sea turtles and to inform possible management decisions for the conservation of the impacted species.

Response: As mentioned above, NMFS used the most recent version of

the annually published LOF as the comprehensive list of commercial fisheries for consideration. NMFS considered the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery, as specified on the LOF, but determined the fishery does not currently meet the criteria for inclusion on the 2018 AD. NMFS has also considered inclusion of several recreational fisheries, but has not yet included any recreational fisheries on the AD. NMFS has utilized other mechanisms, outside of observer programs to collect data on recreational interactions.

Fisheries Included on the 2018 Annual Determination

NMFS includes two new fisheries (both in the Atlantic Ocean/Gulf of Mexico) on the 2018 AD. The two fisheries, described below and listed in Table 1, are the mid-Atlantic gillnet fishery and the Gulf of Mexico menhaden purse seine fishery.

NMFS used the 2017 MMPA LOF (82 FR 3655; January 12, 2017) as the comprehensive list of commercial fisheries to evaluate fisheries to include on the AD. The fishery name, definition, and number of vessels/persons for fisheries listed on the AD are taken from the most recent MMPA LOF. Additionally, the fishery descriptions below include a particular fishery's current classification on the MMPA LOF (*i.e.*, Category I, II, or III); Category I and II fisheries are required to carry observers under the MMPA if requested by NMFS. As noted previously, NMFS also has authority to observe federally permitted vessels under the MSA and collect sea turtle bycatch information.

Gillnet Fisheries

Sea turtles are vulnerable to entanglement and drowning in gillnets. The main risk to sea turtles from capture in gillnet gear is forced submergence (*i.e.*, drowning). Sea turtle entanglement in gillnets can also result in severe constriction wounds and/or abrasions. Large mesh gillnets (*e.g.*, 10–12 inch (in.) (25.4–30.5 centimeter (cm)) stretched mesh or greater) have been documented as particularly effective at capturing sea turtles. However, sea turtles are prone to and have been commonly documented entangled in smaller mesh gillnets as well.

Mid-Atlantic Gillnet Fishery

NMFS includes the mid-Atlantic gillnet fishery on the 2018 AD given known interactions between sea turtles and this gear type and the need to collect more sea turtle bycatch data in state inshore gillnet fisheries. The mid-

Atlantic gillnet fishery was not listed in the 2015 AD, but the Chesapeake Bay inshore gillnet fishery and Long Island inshore gillnet fishery were. By including the mid-Atlantic gillnet fishery in the 2018 AD, we authorize observer coverage more completely in the mid-Atlantic region. The mid-Atlantic gillnet fishery (estimated 3,950 vessels/persons) targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5–12 in. (6.4–30.5 cm), and string lengths from 150–8,400 feet (ft) (46–2,560 meter (m)). This fishery operates year-round west of a line drawn at 72°30' W long. south to 36°33.03' N lat. and east to the eastern edge of the EEZ and north of the North Carolina/South Carolina border, not including Category II and III inshore gillnet fisheries (*i.e.*, Chesapeake Bay, North Carolina, Long Island Sound inshore gillnet, Delaware River inshore gillnet, Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower NY Bays) inshore gillnet fisheries). This fishery includes any residual large pelagic driftnet effort in the mid-Atlantic and any shark and dogfish gillnet effort in the mid-Atlantic zone described. The fishing occurs right off the beach (6 ft. (1.8 m)) or in nearshore coastal waters to offshore waters (250 ft. (76 m)).

Gear in this fishery is managed by several Federal FMPs and Interstate FMPs managed by the Atlantic States Marine Fisheries Commission. These fisheries are primarily managed by total allowable catch (TAC); individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions and modifications.

This fishery is classified as Category I on the MMPA LOF, which authorizes NMFS to observe this fishery in state and federal waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was listed on the 2010 AD and was eligible for observer coverage through 2014.

NMFS includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the

AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been well documented in this fishery, and NMFS intends to monitor this fishery, particularly the segment that occurs in the nearshore coastal waters of the mid-Atlantic and Delaware Bay.

Weir/Seine/Floating Trap Fisheries

Pound net, weir, seine and floating trap fisheries may use mesh similar to that used in gillnets, but the gear is prosecuted differently from traditional gillnets. Purse seines, weirs and floating traps also have the potential to entangle and drown sea turtles.

Gulf of Mexico Menhaden Purse Seine Fishery

NMFS includes the Gulf of Mexico menhaden purse seine fishery on the 2018 AD. The Gulf of Mexico menhaden purse seine fishery (estimated 40–42 vessels/persons) targets menhaden. The fishery uses purse seine gear and operates in bays, sounds, and nearshore coastal waters along the Gulf of Mexico coast. The majority of fishing effort occurs in Louisiana and Mississippi, with lesser effort in Alabama and Texas state waters. Florida prohibits the use of purse seines in state waters. The fishery is state-managed, with planning efforts coordinated under the Gulf States Marine Fisheries Commission Interstate Gulf Menhaden Fishery Management Plan.

This fishery is classified as Category II on the MMPA LOF, and has never been included on the AD. Sea turtle strandings in the northern Gulf of Mexico have been documented during times and in areas near where the menhaden fishery operates. The fishery was observed in the early-1990s by Louisiana State University. In 2011, NMFS conducted a pilot observer program in this fishery to better understand the fishery's operations and evaluate the feasibility of observing for marine mammal and sea turtle bycatch. During the pilot observer program, two sea turtles were documented, one dead Kemp's ridley that was excluded by the large fish excluder and one live unidentified turtle that was successfully released from the purse-seine net. Future observer efforts will build on the information obtained in 2011.

NMFS includes this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in this fishery, and NMFS intends to monitor this fishery.

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES INCLUDED ON THE 2018 ANNUAL DETERMINATION

Fishery	Years eligible to carry observers
<i>Gillnet Fisheries:</i> Mid-Atlantic gillnet	2018–2022
<i>Pound Net/Weir/Seine Fisheries:</i> Gulf of Mexico menhaden purse seine	2018–2022

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

The information collection for the AD is approved under Office of Management and Budget (OMB) under OMB control number 0648–0593.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) on the issuance of the regulations to implement this observer requirement in 50 CFR part 222, subpart D. The EA concluded that implementing these regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of fisheries included on the AD; and, therefore, this final rule would not change the analysis or conclusion of the EA. If NMFS takes a management action for a specific fishery, for example, requiring fishing gear modifications, NMFS would first prepare any environmental document required under NEPA and specific to that action.

This final rule would not affect species listed as threatened or endangered under the ESA or their

associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this final rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This final rule would have no adverse impacts on sea turtles and may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles through information collected from observer programs.

This final rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: May 7, 2018.

Samuel D. Rauch, III,

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

[FR Doc. 2018-09957 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160620545-6999-02]

RIN 0648-XG181

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

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

ACTION: Temporary rule; inseason retention limit adjustment.

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

regarding inseason adjustments. The retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2018 fishing season or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure is warranted. This retention limit adjustment will affect anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective at 11:30 p.m. local time May 12, 2018, through the end of the 2018 fishing season on December 31, 2018, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT:

Lauren Latchford, Guý DuBeck, or Karyl Brewster-Geisz 301-427-8503; fax 301-713-1917.

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

Under § 635.24(a)(8), NMFS may adjust the commercial retention limit in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria and other relevant factors See § 635.24(a)(8)(i)-(vi). After considering these criteria as discussed below, we have concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year. Since landings have reached approximately 20 percent of the quota and are projected to reach 80 percent before the end of the 2018 fishing season, NMFS is reducing the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 25 to 3 LCS other than sandbar per vessel per trip.

NMFS considered whether to reduce the retention limit for LCS other than sandbar sharks, considering the inseason retention limit adjustment criteria listed in § 635.24(a)(8), which includes (broken down by bullet points):

- The amount of remaining shark quota in the relevant area, region, or

sub-region, to date, based on dealer reports.

Based on dealer reports, 32.7 mt dw or 19 percent of the 168.9 mt dw shark quota for the aggregated LCS management group has already been landed in the Atlantic region. This means that approximately 80 percent of the quota remains. At current landings rates, this quota would be expanded by July. These levels this early in the season indicate that unless action is taken to slow landings, fishermen in the Atlantic region may not have an opportunity to fish in the region for the remainder of the year.

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

Dealer reports indicate a high level of average daily landings. At this level, aggregated LCS are being harvested too quickly to ensure fishing opportunities throughout the season. If the per trip limit is left unchanged, aggregated LCS would likely be harvested at such a high rate that there would not be enough aggregated LCS quota remaining to keep the fishery open year-round, precluding equitable fishing opportunities for the entire Atlantic region.

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

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

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

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

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

The directed shark fisheries in the Atlantic region exhibit a mixed species composition, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. As a result, by slowing the harvest and reducing landings on a per-trip basis, both

fisheries could remain open for the remainder of the year.

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

Based on dealer reports, and given NMFS' notice to the regulated community (82 FR 55512, November 22, 2017) that a goal of this year's fishery was to ensure fishing opportunities throughout the fishing season, NMFS has concluded that the aggregated LCS quota is being harvested too quickly to meet conservation and management goals for the fishery. If the harvest of these species is not slowed, we estimate that the fishery would close by the beginning of July. Closing the fishery so early would prevent fishermen from other parts of the Atlantic region from having the same opportunities to harvest the aggregated LCS quota later in the year.

On November 22, 2017 (82 FR 55512), NMFS announced that the aggregated LCS and hammerhead shark management groups for the Atlantic region would open on January 1 with a quota of 168.9 metric tons (mt) dressed weight (dw) (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. In that final rule, NMFS also indicated that if it appeared that the aggregated LCS management group quota is being harvested too quickly, to allow fishermen throughout the entire region an opportunity to fish (e.g., if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit for LCS other than sandbar sharks. Dealer reports through May 4, 2018, indicate that 32.7 mt dw or 19 percent of the available quota for the aggregated LCS management group has been harvested. If the average landings rate for the aggregated LCS management group reflected in the dealer reports continues, landings could reach 80 percent of the quota by the beginning of July. Once the landings reach 80 percent of the quota, NMFS would close both the aggregated

LCS and hammerhead management group because they are linked under the regulations (§ 635.28(b)(3)).

Accordingly, as of 11:30 p.m. local time May 12, 2018, NMFS is reducing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 25 LCS other than sandbar sharks per vessel per trip to 3 LCS other than sandbar sharks per vessel per trip. If the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and "no sale" provisions apply (§ 635.22(a) and (c)), or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, then they are exempted from the retention limit adjustment.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip for the rest of the 2018 fishing season, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure is warranted.

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

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Providing prior notice and an opportunity for comment is

impracticable because the catch and landings that need to be reduced are ongoing and must be reduced immediately to meet conservation and management objectives for the fishery. Continued fishing at those levels during the time that notice and comment takes place would result in the much of the quota being landed and could result in a very early closure of the fishery, contrary to the objectives of the existing conservation and management measures in place for those species. These objectives include ensuring that fishing opportunities are equitable and that bycatch and discards are minimized. Allowing fishing to continue at the existing rates even for a limited time is contrary to these objectives and would thus be impracticable. It would also be contrary to the public interest because, if the quota continues to be caught at the current levels, the quota will not last throughout the remainder of the fishing season and a large number of fishermen would be denied the opportunity to land sharks from the quota. Furthermore, continued catch at the current rates, even for a limited period, could result in eventual quota overharvests, since it is still so early in the fishing year. The AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) for the same reasons. This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866. NMFS has concluded that reducing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will slow the fishery catch rates to allow the fishery throughout the Atlantic region to remain open for the rest of the year.

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

Dated: May 7, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018-09945 Filed 5-7-18; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 83, No. 91

Thursday, May 10, 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.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[GN Docket Nos. 17–183, 18–122; DA 18–398]

Notice of Temporary Freeze on New or Modified Earth Station Applications in the 3.7–4.2 GHz Band; 90-Day Window for Filing Applications Currently Operating in 3.7–4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The International, Public Safety and Homeland Security, and Wireless Telecommunications Bureaus (Bureaus) of the Federal Communications Commission (Commission) announce a temporary freeze, effective April 19, 2018, on the filing of new or modification applications for fixed-satellite service (FSS) earth station licenses, receive-only earth station registrations, and fixed microwave licenses in the 3.7–4.2 GHz frequency band. As a limited exception to the freeze, the International Bureau concurrently opens a 90-day window during which entities that own or operate existing FSS earth stations in the 3.7–4.2 GHz band may file an application to register or license the earth station if it is currently not registered or licensed, or may file an application to modify a current registration or license, in the International Bureau Filing System (IBFS).

DATES: Temporary freeze effective April 19, 2018; the 90-day filing window closes on July 18, 2018.

FOR FURTHER INFORMATION CONTACT: Christopher Bair, 202–418–0945 or Paul Blais, 202–418–7274.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 18–398, released April 19, 2018. The full text of this document is available at https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/

[db0419/DA-18-398A1.pdf](#). It is also 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. To request materials in accessible formats for people with disabilities, send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Background. On August 3, 2017, the Commission released a Notice of Inquiry titled *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz* (NOI). In that NOI, the Commission sought detailed comment on frequency bands that had garnered interest to potentially support increased flexible broadband uses, including the 3.7–4.2 GHz band. While recognizing the existing FSS (space-to-Earth) and Fixed Service (FS) uses of the 3.7–4.2 GHz band, the Commission sought comment on the potential for more intensive use of that band for wireless broadband, including asking how current service rules governing geostationary satellite orbit FSS and FS could be modified to promote flexible use, stimulate investment, and encourage more intensive deployment.

Temporary Freeze. To preserve the current landscape of authorized operations in the 3.7–4.2 GHz band pending the Commission's consideration of the issues raised in response to the NOI, the Bureaus announce a temporary freeze, effective as of April 19, 2018, on the filing of new or modification applications for earth station licenses, receive-only earth station registrations, and fixed microwave licenses in the 3.7–4.2 GHz band.

Earth Stations. During the freeze the International Bureau will dismiss applications, or those portions of applications, received for new earth station licenses, new receive-only earth station registrations, and modifications to earth stations currently authorized to operate in the 3.7–4.2 GHz band. The freeze does not extend to applications for renewal or cancellation of current earth station authorizations, or modifications to correct location or other data required in the earth station file.

Fixed Microwave. During the freeze, the Wireless Telecommunications and Public Safety and Homeland Security

Bureaus will dismiss applications received for new or major modifications to fixed microwave stations to operate in the 3.7–4.2 GHz band. The freeze does not extend to applications for renewal, cancellation, minor modifications, or data corrections.

Waiver Requests. The appropriate Bureau will consider requests for waiver of this freeze on a case-by-case basis and upon a demonstration that waiver will serve the public interest and not undermine the objectives of the freeze.

90-day Application Filing Window for Existing FSS Earth Stations. The International Bureau announces a 90-day window for filing applications to license or register existing earth stations in the 3.7–4.2 GHz frequency band as a limited exception to the implementation of this freeze. For purposes of this Notice, existing earth stations are those that have been constructed and are operational as of April 19, 2018. The filing window will close on July 18, 2018. This filing window provides a limited opportunity to operators with constructed and operational, but currently unregistered or unlicensed, earth stations to file applications to be licensed or registered for interference protection, subject to the outcome of the Commission's ongoing inquiry and any subsequent proceeding(s).

Temporary Waiver of Frequency Coordination Requirement. To obtain the best information possible on existing earth stations in this band without imposing a potentially unnecessary economic burden on eligible FSS earth station applicants in the 3.7–4.2 GHz band filing within the 90-day window, the International Bureau hereby grants a temporary waiver of the frequency coordination requirement. Applicants who file within the 90-day window will otherwise be processed normally. Registrations or licenses granted for applications filed without the coordination report will include a condition noting that the license or registration does not afford interference protection from FS transmissions. Upon announcing the termination of the freeze, the International Bureau may modify or terminate the waiver by requiring or permitting registrants or licensees who filed applications within the 90-day window without a coordination report to file such a report as required by the Commission's rules,

and to take any appropriate action in light of such filing.

Applicants for earth station licenses and registrations must file on FCC Form 312 Main Form, complete Form 312 Schedule B, remit the statutory application-filing fee, and provide any additional information required by applicable rules. Applications must be filed electronically through IBFS at <http://licensing.fcc.gov/myibfs>.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Federal Communications Commission.

Troy Tanner,

Deputy Chief, International Bureau.

[FR Doc. 2018–09943 Filed 5–9–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

Notification of Open Commission Meeting

AGENCY: Federal Communications Commission.

ACTION: Notification of public meeting.

SUMMARY: The Federal Communications Commission will hold an Open Meeting on the subjects listed below in **SUPPLEMENTARY INFORMATION** on Thursday, May 10, 2018.

DATES: The meeting will take place on Thursday, May 10, 2018, and is scheduled to commence at 10:30 a.m..

ADDRESSES: The location of the meeting is Room TW–C305, at 445 12th Street SW, Washington, DC.

Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at www.fcc.gov/live. For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the internet. To purchase these services, call (703) 993–3100 or go to www.capitolconnection.gmu.edu.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Contact Marlene Dortch, 202 418–0330 for information about this document.

SUPPLEMENTARY INFORMATION:

Item No.	Bureau	Subject
1	Enforcement	<i>Title:</i> Enforcement Bureau Action. <i>Summary:</i> The Commission will consider an enforcement action.
2	Wireless Tele-Communications	<i>Title:</i> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Transforming the 2.5 GHz Band (WT Docket No. 18–120). <i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking that would allow more efficient and effective use of 2.5 GHz spectrum by seeking input on increasing flexibility for existing Educational Broadband Service (EBS) licensees and providing new opportunities for educational entities, rural Tribal Nations, and commercial entities to access unused portions of the band.
3	Media	<i>Title:</i> Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference (MB Docket No. 18–119). <i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking which proposes to streamline the rules relating to interference caused by FM translators and expedite the translator complaint resolution process.
4	Media	<i>Title:</i> Amendment of Parts 0, 1, 5, 73, and 74 of the Commission's Rules Regarding Posting of Station Licenses and Related Information (MB Docket No. 18–121); Modernization of Media Regulation Initiative (MB Docket No. 17–105). <i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking seeking comment on whether to streamline or eliminate certain rules which require the physical posting and maintenance of broadcast licenses and related information in specific locations.
5	Media	<i>Title:</i> Hearing Designation Order. <i>Summary:</i> The Commission will consider a Hearing Designation Order.

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The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with

disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: fcc504@fcc.gov or call the Consumer & Governmental

Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–09973 Filed 5–9–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 180209155–8399–01]

RIN 0648–BH77

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Limits in Purse Seine and Longline Fisheries, Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries, and Transshipment Prohibitions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS seeks comments on this proposed rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). The proposed rule would implement recent decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). These decisions include the following management measures: limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone and on the high seas between the latitudes of 20° N and 20° S in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention); restrictions regarding the use of fish aggregating devices (FADs) for U.S. purse seine fishing vessels; limits on the catches of bigeye tuna by U.S. longline vessels in the Convention area; prohibitions on U.S. vessels used to fish for highly migratory species from engaging in transshipment in a particular area of the high seas (the Eastern High Seas Special Management Area or EHSSMA); and removal of existing reporting requirements for vessels transiting the EHSSMA. The rule also would make corrections to outdated cross references in existing regulatory text. This action is necessary to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: Comments on the proposed rule must be submitted in writing by May 25, 2018.

ADDRESSES: You may submit comments on the proposed rule and the regulatory impact review (RIR) prepared for the proposed rule, identified by NOAA–NMFS–2018–0050, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/ #!docketDetail;D=NOAA-NMFS-2018-0050,

2. Click the “Comment Now!” icon, complete the required fields, and

3. Enter or attach your comments.

—OR—

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

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

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the RIR, the 2015 programmatic environmental assessment, and 2012 environmental assessment prepared for National Environmental Policy Act (NEPA) purposes are available at www.regulations.gov or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to PIRO at the address listed above and by email to OIRA_Submission@omb.eop.gov or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–725–5033.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention focused on the conservation and management of fisheries for highly migratory species (HMS). The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the Western and Central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures and other decisions adopted by the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

Background on the Conservation and Management Measures

This proposed rule would implement specific provisions of two recent WCPFC decisions. The first decision, Conservation and Management Measure (CMM) 2017–01, “Conservation and Management Measure for Bigeye,

Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean,” was adopted by the Commission at its fourteenth regular annual session, in December 2017, and went into effect February 2018. The provisions of CMM 2017–01 are described in more detail below. The second decision, CMM 2016–02, “Conservation and Management Measures for Eastern High Seas Pocket Special Management Area,” revises a previous measure regarding the EHSSMA so that vessels are no longer required to provide reports to the Commission when entering and exiting the EHSSMA and also prohibits all transshipment activities in the area starting on January 1, 2019.

CMM 2017–01 is the latest in a series of CMMs devoted to the conservation and management of tropical tuna stocks, particularly stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*). The stated purpose of CMM 2017–01 is to provide for a robust transitional management regime that ensures the sustainability of bigeye tuna, yellowfin tuna, and skipjack tuna in the WCPO pending the Commission’s establishment of harvest strategies.

In order to achieve that stated purpose, CMM 2017–01 includes provisions for longline and purse seine vessels that would be implemented in this proposed rule. For longline vessels, the CMM includes specific bigeye tuna catch limits for several WCPFC members, including the United States. The CMM provides for a limit of 3,554 metric tons (mt) of bigeye tuna that may be caught by U.S. longline vessels fishing in the Convention Area for calendar year 2018, which is the same as the U.S. limit in 2016, as specified in earlier WCPFC decisions. As in previous WCPFC CMMs on tropical tunas, CMM 2017–01 also requires any overage of the catch limit to be deducted from the following year’s limit.

Also as in previous CMMs, no limits apply to the longline fisheries of the U.S. Participating Territories of American Samoa, Guam, and CNMI. In addition, CMM 2017–01 includes a new provision for U.S. longline vessels, stating that catch and effort of U.S.-flagged vessels operating under agreements with the U.S. Participating Territories shall be attributed to the U.S. Participating Territories.

For purse seine vessels, CMM 2017–01 includes several restrictions on the use of FADs and provides for specific limits on fishing effort.

The first FAD restriction is similar to the one included in previous WCPFC decisions and requires purse seine

vessels to be prohibited from fishing on FADs on the high seas and in the exclusive economic zones (EEZs) in the Convention Area between the latitudes of 20° N and 20° S from July 1 through September 30 of 2018. The second FAD restriction requires WCPFC members to establish an additional consecutive two-month FAD prohibition period on the high seas in the Convention Area in 2018, in either April and May or November and December. CMM 2017–01 also includes provisions encouraging WCPFC members to use non-entangling design and materials as well as biodegradable materials in the construction of FADs. Finally, CMM 2017–01 includes a provision requiring that each purse seine vessel have no more than 350 drifting FADs with activated instrumented buoys deployed at sea in the Convention Area at any one time through February 10, 2021. Under the CMM, an instrumented buoy is defined as a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position. The CMM states that the buoy shall be activated exclusively on board the vessel.

Under CMM 2017–01, WCPFC members must also limit their purse seine vessels to specific fishing effort limits. The limits on U.S. purse seine fishing effort detailed in CMM 2017–01 are similar to limits in previous WCPFC decisions. The limits are 558 fishing days in the U.S. EEZ and 1,270 fishing days on the high seas in the Convention Area between the latitudes of 20° N and 20° S for each of the calendar years 2018–2020. However, CMM 2017–01 also includes a new provision for 2018 only that allows the United States to transfer 100 fishing days from its limit in the U.S. EEZ to its limit on the high seas, and if the U.S. EEZ limit is reached by October 1, 2018, the U.S. EEZ limit will be increased by an additional 100 fishing days, with the expectation that the catch taken by U.S. flagged vessels and landed in American Samoa for the American Samoa canneries is no less than the volume landed in 2017 plus an additional 3,500 short tonnes. This new provision was intended to alleviate the economic hardship faced by American Samoa and its canneries when U.S. purse seine fishing limits are reached, resulting in fishery closures.

CMM 2017–01 also includes provisions for purse seine vessels that were in previous WCPFC decisions and that have been implemented by NMFS in regulations that continue in force. These provisions include requirements for purse seine vessels to retain all catch of bigeye tuna, yellowfin tuna, and

skipjack tuna, for observer coverage on purse seine vessels, and for vessel monitoring system requirements for purse seine vessels during the FAD closure periods.

Proposed Action

The elements of the proposed rule are detailed below. The administrative changes that would be made to correct outdated references in existing regulatory text are described at the end.

As described above, some of the provisions in CMM 2017–01 apply only to calendar year 2018, while others are applicable until February 10, 2021. Because the Commission likely will continue to implement similar management measures regarding FADs, purse seine effort limits, and longline bigeye tuna catch limits beyond 2018, and to avoid a lapse in the management of the fishery, NMFS is proposing to implement all of the elements of CMM 2017–01 in this proposed rule under the authority of the WCPFC Implementation Act, 16 U.S.C. 6904(a), so that they will remain effective until they are replaced or amended. Because the Commission developed CMM 2017–01 as generally a three-year conservation and management measure (2018–2020), the supporting analyses for this rule covers a three-year time period, understanding that these analyses would need to be supplemented should the elements of the rule remain effective for more than three years.

Longline Bigeye Tuna Catch Limits

The Commission-adopted longline bigeye tuna catch limit for the United States for 2018 is 3,554 mt. As stated above, CMM 2017–01 reiterates the provision of earlier CMMs that states that any catch overage in a given year shall be deducted from the catch limit for the following year. The longline bigeye tuna catch limit for the United States in 2017 was 3,138 mt (see Interim Rule; 82 FR 36341, published August 4, 2017). Based on preliminary estimates, NMFS believes that the 2017 limit might have been exceeded, but the amount of the overage, if it occurred, is not yet known. Thus, NMFS is proposing a calendar year catch limit of 3,554 mt that would remain effective until replaced. However, for 2018, it is possible that this limit would be adjusted downward to account for any overage in 2017; the limit would similarly be adjusted downward in future years, should any overages occur. NMFS will determine the exact amount of the overage prior to publication of the final rule and include the exact amount of the 2018 limit in the final rule.

The calendar year longline bigeye tuna catch limit will apply only to U.S.-flagged longline vessels operating as part of the U.S. longline fisheries. The limit will not apply to U.S. longline vessels operating as part of the longline fisheries of American Samoa, CNMI, or Guam. Existing regulations at 50 CFR 300.224(b), (c), and (d) detail the manner in which longline-caught bigeye tuna is attributed among the fisheries of the United States and the U.S. Participating Territories.

Consistent with the basis for the limits prescribed in CMM 2017–01 and with regulations issued by NMFS to implement bigeye tuna catch limits in U.S. longline fisheries as described below, the catch limit is measured in terms of retained catches—that is, bigeye tuna that are caught by longline gear and retained on board the vessel.

1. Announcement of the Limit Being Reached

As set forth under the existing regulations at 50 CFR 300.224(e), if NMFS determines that the limit is expected to be reached in a calendar year, NMFS will publish a notice in the **Federal Register** to announce specific fishing restrictions that will be effective from the date the limit is expected to be reached until the end of the calendar year. NMFS will publish the notice of the restrictions at least 7 calendar days before the effective date to provide vessel owners and operators with advance notice. Periodic forecasts of the date the limit is expected to be reached will be made available to the public, such as by posting on a website, to help vessel owners and operators plan for the possibility of the limit being reached.

2. Restrictions After the Limit Is Reached

As set forth under the existing regulations at 50 CFR 300.224(f), if the limit is reached, the restrictions that will be in effect will include the following:

a. Retain on board, transship, or land bigeye tuna: Starting on the effective date of the restrictions and extending through December 31 of the given calendar year, it will be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

First, any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions can be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. A vessel that had declared to NMFS pursuant to 50 CFR 665.803(a)

that the current trip type is shallow-setting is not subject to this 14-day landing restriction, so these vessels will be able to land bigeye tuna more than 14 days after the restrictions become effective.

Second, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit, or if they are landed in American Samoa, Guam, or CNMI. However, the bigeye tuna must not be caught in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago, and must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

Third, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a vessel that is included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

b. Transshipment of bigeye tuna to certain vessels: Starting on the effective date of the restrictions and extending through December 31 of the calendar year, it will be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

c. Fishing inside and outside the Convention Area: To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, two additional, related prohibitions would be in effect starting on the effective date of the restrictions and extending through December 31 of the calendar year. First, vessels are prohibited from fishing with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel still must land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area, specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not

available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use. These two prohibitions do not apply to the following vessels: (1) Vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI. This second group includes vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the conditions described above, and vessels included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

FAD Restrictions

In accordance with CMM 2017–01, NMFS proposes to establish a FAD prohibition period from July through September in each calendar year in the Convention Area between the latitudes of 20° N and 20° S (inclusive of the EEZs and high seas in the Convention Area). Regarding the additional consecutive two-month FAD prohibition period on the high seas in the Convention Area, after considering the objectives of CMM 2017–01, the expected economic impacts on U.S. fishing operations and the nation as a whole, and expected environmental and other effects, NMFS expects that a high seas FAD prohibition period in November and December may be somewhat more cost-effective than a FAD prohibition period in April and May. For this reason, NMFS is proposing to implement the high seas FAD prohibition period in November and December for each calendar year. We specifically seek public comment on which option is more appropriate. A comparison of the two options' expected direct economic impacts on affected fishing businesses is provided in the RIR.

As currently defined in 50 CFR 300.211, a FAD is “any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not include a vessel.” Under this proposed rule, the regulatory definition of a FAD would not change. Although the definition of a FAD does not include a vessel, the restrictions during the FAD

prohibition periods would include certain activities related to fish that have aggregated in association with a vessel, or drawn by a vessel, as described below.

The prohibitions applicable to these proposed FAD-related measures are in existing regulations at 50 CFR 300.223(b)(1)(i)–(v). Specifically, during the July–September FAD prohibition periods in each calendar year, and on the high seas in November and December, owners, operators, and crew of fishing vessels of the United States equipped with purse seine gear shall not do any of the following activities in the Convention Area in the area between 20° N latitude and 20° S latitude:

(1) Set a purse seine around a FAD or within one nautical mile of a FAD;

(2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel;

(3) Deploy a FAD into the water;

(4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that a FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and a FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

(5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, submerge lights under water; suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew. These prohibitions would not apply during emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage.

This proposed rule would revise the introductory paragraph of 50 CFR 300.223(b)(1) to make it more clear that

the prohibitions apply only to owners, operators, and crew of purse seine fishing vessels. NMFS has recently received inquiries as to whether the prohibitions apply to the owners, operators, and crew of vessels using other gear types. This proposed rule would also make a technical change to 50 CFR 300.223(b)(1)(iv)(B) to clarify that, during the FAD prohibition periods, a FAD may be removed from the water to be repaired, cleaned, maintained, or otherwise serviced, provided that it is not returned to the water. This minor change ensures consistency with the introductory language in that paragraph.

NMFS has recently issued final regulations to implement provisions of a resolution adopted by the Inter-American Tropical Tuna Commission (IATTC) that includes restrictions on the number of FADs with activated instrumented buoys for each purse seine vessel deployed at sea in the IATTC area at any one time (see Final Rule; 83 FR 15503, published April 11, 2018). In order to provide some consistency to the regulated community, NMFS is proposing similar regulations in this rule to implement the limit regarding FADs with activated instrumented buoys specified in CMM 2017–01.

Under the proposed rule, an active FAD is defined as a FAD that is equipped with a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position, as specified by the definition of instrumented buoy in CMM 2017–01.

CMM 2017–01 specifies that the buoy shall be activated exclusively on board the vessel. In order to implement this provision, the proposed rule specifies that the tracking equipment must be turned on while the FAD is onboard the vessel and before it is deployed in the water. In accordance with CMM 2017–01, under the proposed rule, each U.S. purse seine vessel would have a limit of 350 active drifting FADs in the Convention Area at any one time.

Purse Seine Fishing Effort Limits

In the past, NMFS has implemented the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ adopted by the Commission as a single combined limit in a combined area of the high seas and U.S. EEZ termed the Effort Limit Area for Purse Seine or ELAPS. NMFS' reasoning for combining the high seas and U.S. EEZ limits was that it afforded more operational flexibility to the fleet and there are no substantial differences in terms of effects to living marine resources for treating the two areas separately or

combined so long as the overall effort remained equal or less than the sum of the two limits. For this proposed rule, in light of CMM 2017–01's provision allowing the United States to transfer some of its EEZ days to the high seas, there is a need to separately account for the U.S. high seas limit and the U.S. EEZ limit. Thus, NMFS will no longer combine the two limits under a single limit. As stated above, CMM 2017–01 specifies a limit of 1,270 fishing days per year for the high seas and a limit of 558 fishing days per year for the U.S. EEZ. The proposed rule would establish a limit of 1,370 fishing days on the high seas and a separate limit of 458 fishing days in the U.S. EEZ. These numbers utilize the provision of CMM 2017–01 provided to alleviate the economic hardship experienced by American Samoa during a fishery closure and transfer 100 fishing days from the U.S. EEZ effort limit to the high seas effort limit.

CMM 2017–01 also specifies that the United States may add an additional 100 fishing days to its annual purse seine fishing effort limit in the U.S. EEZ if the limit in the U.S. EEZ is reached by October 1, 2018. As discussed above, NMFS is proposing to implement the elements of the rule so they are effective until they are amended or replaced. Thus, under the proposed rule, when NMFS expects that the U.S. EEZ effort limit would be reached by October 1, NMFS would publish a notice in the **Federal Register**, no later than seven days prior to October 1, to increase the U.S. EEZ effort limit by 100 fishing days for that calendar year.

The meaning of “fishing day” is defined at 50 CFR 300.211; that is, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

NMFS will monitor the number of fishing days spent in the U.S. EEZ and on the high seas using data submitted in logbooks and other available information. If and when NMFS determines that a limit is expected to be reached by a specific future date, it will publish a notice in the **Federal Register** announcing that the purse seine fishery in the area where the limit is expected to be reached will be closed starting on a specific future date and will remain closed until the end of the calendar year. NMFS will publish that notice at least seven days in advance of the closure date. Starting on the announced closure date, and for the remainder of

calendar year, it will be prohibited for U.S. purse seine vessels to fish in the area where the limit is expected to be reached, except that such vessels would not be prohibited from bunkering (refueling) during a fishery closure. NMFS published an interim rule on August 25, 2015 (see 80 FR 51478) to remove the restriction that prohibited U.S. purse seine vessels from conducting bunkering during fishery closures of the ELAPS. NMFS is proposing to continue those regulations as part of this proposed rule so that bunkering would be allowed during any fishery closures of the U.S. EEZ or high seas due to reaching a limit in a given calendar year.

Under existing regulations at 50 CFR 300.218(g), NMFS can direct U.S. purse seine vessel owners and operators to provide daily FAD reports, specifying the number of purse seine sets made on FADs during that day. NMFS promulgated this regulation to help track a limit on the number of FAD sets that was applicable in previous years but recognizes that this information is also valuable to help predict when a fishing effort limit is expected to be reached with greater certainty. Thus, under this proposed rule, NMFS would revise the existing regulations so that NMFS can direct U.S. purse seine vessel owners and operators to provide reports on the fishing activity of the vessel (e.g., setting, transiting, searching), location, and type of set, in order to obtain better data for tracking the fishing effort limits.

Eastern High Seas Special Management Area

This proposed rule would remove the requirements at 50 CFR 300.222(oo) and 50 CFR 300.225 for U.S. commercial fishing vessels to provide reports prior to entering or exiting the EHSSMA. This proposed rule would also prohibit all U.S. commercial fishing vessels fishing for HMS from engaging in transshipments in the EHSSMA, beginning on January 1, 2019.

Administrative Changes to Existing Regulations

The regulations at 50 CFR 300.217(b) and 300.218(a)(2)(v) contain outdated cross references that would be corrected by this proposed rule. In § 300.217, paragraph (b)(1) would be revised to provide a cross reference to § 300.336(b)(2), not § 300.14(b), and in § 300.218(a)(2)(v), the cross reference would be to § 300.341(a) instead of to § 300.17(a) and (b). Sections 300.14(b) and 300.17(a) and (b) no longer exist and have been replaced through a new regulatory action implementing

provisions of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*).

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment. Section 304(b) of the MSA provides for a 15 day comment period for these types of fishery rules. Additionally, NMFS finds “good cause” under the Administrative Procedure Act that a longer notice and comment period would be contrary to the public interest. 5 U.S.C. 553(b)(B). As described above, the first FAD prohibition period would begin on July 1, 2018. Providing for more than 15 days advance notice and public comment on the proposed rule increases the risk that the Commission’s FAD prohibition period will become effective prior to the effective date of the final rule, possibly resulting in the United States’ non-compliance with its international obligations. Thus, in order to provide the public with the opportunity to comment on this proposed rule while ensuring that the agency has sufficient time to consider any public comments and publish a final rule that is effective by July 1, 2018, NMFS is providing the public with a 15-day comment period on this proposed rule.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. Determinations to Hawaii and each of the Territories were submitted on March 12, 2018, for review by the responsible state and territorial agencies under section 307 of the CZMA.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

Regulatory Flexibility Act (RFA)

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of

the action, why it is being considered as well as its objectives, and the legal basis for this action are contained in the

SUMMARY section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The proposed rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the Convention Area, including longline vessels (except those operating as part of the longline fisheries of American Samoa, CNMI, or Guam), purse seine vessels, and albacore troll vessels. Based on the number of U.S. vessels with WCPFC Area Endorsements, which are required to fish on the high seas in the Convention Area, the estimated numbers of affected longline, purse seine, and albacore troll fishing vessels is 163, 37, and 20, respectively.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all of the affected longline and albacore troll vessels, and slightly more than half of the vessels in the purse seine fleet, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11.0 million. Within the purse seine fleet, analysis of average revenue, by vessel, for the three years of 2014–2016 reveals that average annual revenue among vessels in the fleet was about \$10.2 million, and the three-year annual averages were less than the \$11 million threshold for 22 vessels in the fleet.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the requirements and

the types of professional skills necessary to fulfill the requirements are described below for each of the first four elements of the proposed rule. The fifth element, administrative changes to existing regulations, is not considered further in this IRFA because it would be of a housekeeping nature and not have any substantive effects on any entities.

1. Longline Bigeye Tuna Catch Limits

This element of the proposed rule would not establish any new reporting or recordkeeping requirements. The new compliance requirement would be for affected vessel owners and operators to cease retaining, landing, and transshipping bigeye tuna caught with longline gear in the Convention Area if and when the bigeye tuna catch limit of 3,554 mt (reduced by the amount of any overages in the preceding year) is reached in any of the years 2018–2020, for the remainder of the calendar year, subject to the exceptions and provisos described in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. Although the restrictions that would come into effect in the event the catch limit is reached would not prohibit longline fishing, *per se*, they are sometimes referred to in this analysis as constituting a fishery closure.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with this requirement are described below to the extent possible.

Complying with this element of the proposed rule could cause foregone fishing opportunities and result in associated economic losses in the event that the bigeye tuna catch limit is reached in any of the years 2018–2020 and the restrictions on retaining, landing, and transshipping bigeye tuna are imposed for portions of those years. These costs cannot be projected quantitatively with any certainty. The proposed annual limit of 3,554 mt can be compared to catches in 2005–2008, before limits were in place. The average annual catch in that period was 4,709 mt. Based on that history, as well as fishing patterns in 2009–2016, when limits were in place, there appears to be a relatively high likelihood of the proposed limits being reached in 2018–2020. In 2015, for example, which saw exceptionally high catches of bigeye tuna, the limit of 3,502 mt was estimated to have been reached by, and the fishery was closed on, August 5 (see temporary rule published July 28, 2015; 80 FR 44883). The fishery was subsequently re-opened for vessels

included in agreements with the governments of the CNMI and Guam under regulations implementing Amendment 7 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP) (50 CFR 665.819). In 2016, the limit of 3,554 mt was estimated to have been reached by September 9, 2016, and in 2017, the limit of 3,138 mt was estimated to have been reached by September 1, 2017. Thus, if bigeye tuna catch patterns in 2018–2020 are like those in 2005–2008, the limit would be reached in the fourth quarter of the year, and if they are like those in 2015, 2016, or 2017, the limit would be reached in the third quarter of the year.

If the bigeye tuna limit is reached before the end of any of the years 2018–2020 and the Convention Area longline bigeye tuna fishery is consequently closed for the remainder of the calendar year, it can be expected that affected vessels would shift to the next most profitable fishing opportunity (which might be not fishing at all). Revenues from that next best alternative activity reflect the opportunity costs associated with longline fishing for bigeye tuna in the Convention Area. The economic cost of the proposed rule would not be the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area, but rather the difference in benefits derived from that activity and those derived from the next best activity. The economic cost of the proposed rule on affected entities is examined here by first estimating the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area as a result of the catch limit being reached. Those losses represent the upper bound of the economic cost of the proposed rule on affected entities. Potential next-best alternative activities that affected entities could undertake are then identified in order to provide a (mostly qualitative) description of the degree to which actual costs would be lower than that upper bound.

Upper bounds on potential economic costs can be estimated by examining the projected value of longline landings from the Convention Area that would not be made as a result of reaching the limit. For this purpose, it is assumed that, absent this proposed rule, bigeye tuna catches in the Convention Area in each of the years 2018–2020 would be 5,000 mt, slightly more than the average in 2005–2008. Under this scenario, imposition of annual limits of 3,554 mt would result in 29 percent less bigeye tuna being caught each year than under no action. In the deep-set fishery,

catches of marketable species other than bigeye tuna would likely be affected in a similar way if vessels do not shift to alternative activities. Assuming for the moment that ex-vessel prices would not be affected by a fishery closure, under the proposed rule, revenues in 2018–2020 to entities that participate exclusively in the deep-set fishery would be approximately 29 percent less than under no action. Average annual ex-vessel revenues (from all species) per mt of bigeye tuna caught during 2005–2008 were about \$14,190/mt (in 2014 dollars, derived from the latest available annual report on the pelagic fisheries of the western Pacific Region (Western Pacific Regional Fishery Management Council, 2014, Pelagic Fisheries of the Western Pacific Region: 2012 Annual Report. Honolulu, Western Pacific Fishery Management Council)). If there are 128 active vessels in the fleet, as there were during 2005–2008, on average, then under the no-action scenario of fleet-wide annual catches of 5,000 mt, each vessel would catch 39 mt/yr, on average. Reductions of 29 percent in 2018–2020 as a result of the proposed limits would be about 11 mt per year. Applying the average ex-vessel revenues (from all species) of \$14,190 per mt of bigeye tuna caught, the reductions in ex-vessel revenue per vessel would be \$160,000 per year, on average.

In the shallow-set fishery, affected entities would bear limited costs in the event of the limit being reached (but most affected entities also participate in the deep-set fishery and might bear costs in that fishery, as described below). The cost would be about equal to the revenues lost from not being able to retain or land bigeye tuna captured while shallow-setting in the Convention Area, or the cost of shifting to shallow-setting in the eastern Pacific Ocean (EPO), which is to the east of 150 degrees W longitude, whichever is less. In the fourth calendar quarters of 2005–2008, almost all shallow-setting effort took place in the EPO, and 97 percent of bigeye tuna catches were made there, so the cost of a bigeye tuna fishery closure to shallow-setting vessels would appear to be very limited. During 2005–2008, the shallow-set fishery caught an average of 54 mt of bigeye tuna per year from the Convention Area. If the proposed bigeye tuna catch limit is reached even as early as July 31 in any of the years 2018–2020, the Convention Area shallow-set fishery would have caught at that point, based on 2005–2008 data, on average, 99 percent of its average annual bigeye tuna catches. Imposition of the landings restriction at

that point in any of the years 2018–2020 would result in the loss of revenues from approximately 0.5 mt (1 percent of 54 mt) of bigeye tuna, which, based on recent ex-vessel prices, would be worth no more than \$5,000. Thus, expecting about 27 vessels to engage in the shallow-set fishery (the annual average in 2005–2012), the average of those potentially lost annual revenues would be no more than \$200 per vessel. The remainder of this analysis focuses on the potential costs of compliance in the deep-set fishery.

It should be noted that the impacts on affected entities' profits would be less than impacts on revenues when considering the costs of operating vessels, because costs would be lower if a vessel ceases fishing after the catch limit is reached. Variable costs can be expected to be affected roughly in proportion to revenues, as both variable costs and revenues would stop accruing once a vessel stops fishing. But affected entities' costs also include fixed costs, which are borne regardless of whether a vessel is used to fish—*e.g.*, if it is tied up at the dock during a fishery closure. Thus, profits would likely be adversely impacted proportionately more than revenues.

As stated previously, actual compliance costs for a given entity might be less than the upper bounds described above, because ceasing fishing would not necessarily be the most profitable alternative opportunity when the catch limit is reached. Two alternative opportunities that are expected to be attractive to affected entities include: (1) Deep-set longline fishing for bigeye tuna in the Convention Area in a manner such that the vessel is considered part of the longline fishery of American Samoa, Guam, or the CNMI; and (2) deep-set longline fishing for bigeye tuna and other species in the EPO. These two opportunities are discussed in detail below. Four additional opportunities are: (3) Shallow-set longline fishing for swordfish (for deep-setting vessels that would not otherwise do so), (4) deep-set longline fishing in the Convention Area for species other than bigeye tuna, (5) working in cooperation with vessels operating as part of the longline fisheries of the Participating Territories—specifically, receiving transshipments at sea from them and delivering the fish to the Hawaii market, and (6) vessel repair and maintenance. A study by NMFS of the effects of the WCPO bigeye tuna longline fishery closure in 2010 (Richmond, L., D. Kotowicz, J. Hospital and S. Allen, 2015, Monitoring socioeconomic impacts of Hawai'i's 2010 bigeye tuna

closure: Complexities of local management in a global fishery, Ocean & Coastal Management 106:87–96) did not identify the occurrence of any alternative activities that vessels engaged in during the closure, other than deep-setting for bigeye tuna in the EPO, vessel maintenance and repairs, and granting lengthy vacations to employees. Based on those findings, NMFS expects that alternative opportunities (3), (4), (5) and (6) are probably unattractive relative to the first two alternatives, and are not discussed here in any further detail. NMFS recognizes that vessel maintenance and repairs and granting lengthy vacations to employees are two alternative activities that might be taken advantage of if the fishery is closed, but no further analysis of their mitigating effects is provided here.

Before examining in detail the two potential alternative fishing opportunities that would appear to be the most attractive to affected entities, it is important to note that under the proposed rule, once the limit is reached and the WCPO bigeye tuna fishery is closed, fishing with longline gear both inside and outside the Convention Area during the same trip would be prohibited (except in the case of a fishing trip that is in progress when the limit is reached and the restrictions go into effect). For example, after the restrictions go into effect, during a given fishing trip, a vessel could be used for longline fishing for bigeye tuna in the EPO or for longline fishing for species other than bigeye tuna in the Convention Area, but not for both. This reduced operational flexibility would bring costs, because it would constrain the potential profits from alternative opportunities. Those costs cannot be quantified.

A vessel could take advantage of the first alternative opportunity (deep-setting for bigeye tuna in a manner such that the vessel is considered part of the longline fishery of one of the three U.S. Participating Territories), by three possible methods: (a) Landing the bigeye tuna in one of the three Participating Territories, (b) holding an American Samoa Longline Limited Access Permit, or (c) being considered part of a Participating Territory's longline fishery, by agreement with one or more of the three Participating Territories under the regulations implementing Amendment 7 to the Pelagics FEP (50 CFR 665.819). In the first two circumstances, the vessel would be considered part of the longline fishery of the Participating Territory only if the bigeye tuna were not caught in the portion of the U.S. EEZ around

the Hawaiian Islands and were landed by a U.S. vessel operating in compliance with a permit issued under the regulations implementing the Pelagics FEP or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

With respect to the first method of engaging in alternative opportunity 1 (1.a.) (landing the bigeye tuna in one of the Participating Territories), there are three potentially important constraints. First, whether the fish are landed by the vessel that caught the fish or by a vessel to which the fish were transshipped, the costs of a vessel transiting from the traditional fishing grounds in the vicinity of the Hawaiian Archipelago to one of the Participating Territories would be substantial. Second, none of these three locales has large local consumer markets to absorb substantial additional landings of fresh sashimi-grade bigeye tuna. Third, transporting the bigeye tuna from these locales to larger markets, such as markets in Hawaii, the U.S. west coast, or Japan, would bring substantial additional costs and risks. These cost constraints suggest that this alternative opportunity has limited potential to mitigate the economic impacts of the proposed rule on affected small entities.

The second method of engaging in the first alternative opportunity (1.b.) (having an American Samoa Longline Limited Access Permit), would be available only to the subset of the Hawaii longline fleet that has both Hawaii and American Samoa longline permits (dual permit vessels). Vessels that do not have both permits could obtain them if they meet the eligibility requirements and pay the required costs. For example, the number of dual permit vessels increased from 12 in 2009, when the first WCPO bigeye tuna catch limit was established, to 23 in 2016. The previously cited NMFS study of the 2010 fishery closure (Richmond *et al.* 2015) found that bigeye tuna landings of dual permit vessels increased substantially after the start of the closure on November 22, 2010, indicating that this was an attractive opportunity for dual permit vessels, and suggesting that those entities might have benefitted from the catch limit and the closure.

The third method of engaging in the first alternative opportunity (1.c.) (entering into an Amendment 7 agreement), was also available in 2011–2017 (in 2011–2013, under section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012, continued by Public Law 113–6, 125 Stat. 603, section 110, the

Department of Commerce Appropriations Act, 2013; hereafter, “section 113(a)”). As a result of agreements that were in place in 2011–2014, the WCPO bigeye tuna fishery was not closed in any of those years. In 2015, 2016, and 2017 the fishery was closed but then reopened when agreements went into effect. Participation in an Amendment 7 agreement would likely not come without costs to fishing businesses. As an indication of the possible cost, the terms of the agreement between American Samoa and the members of the Hawaii Longline Association (HLA) in effect in 2011 and 2012 included payments totaling \$250,000 from the HLA to the Western Pacific Sustainable Fisheries Fund, equal to \$2,000 per vessel. It is not known how the total cost was allocated among the members of the HLA, so it is possible that the owners of particular vessels paid substantially more than or less than \$2,000.

The second alternative opportunity (2) (deep-set fishing for bigeye tuna in the EPO), would be an option for affected entities only if it is allowed under regulations implementing the decisions of the IATTC. NMFS has issued a final rule to implement the IATTC’s most recent resolution on the management of tropical tuna stocks (83 FR 15503; April 11, 2018). The final rule establishes an annual limit of 750 mt on the catch of bigeye tuna in the EPO by vessels at least 24m in length in each of the years 2018–2020. Annual longline bigeye tuna catch limits have been in place for the EPO in most years since 2004. Since 2009, when the limit was 500 mt, it was reached in 2013 (November 11), 2014 (October 31), and 2015 (August 12). In 2016 NMFS forecasted that the limit would be reached July 25 and subsequently closed the fishery, but later determined that the catch limit had not been reached and reopened the fishery on October 4, 2016 (81 FR 69717). The limit was not reached in 2017.

The highly seasonal nature of bigeye tuna catches in the EPO and the relatively high inter-annual variation in catches prevents NMFS from making a useful prediction of whether and when the EPO limits in 2018–2020 are likely to be reached. If it is reached, this alternative opportunity would not be available for large longline vessels, which constitute about a quarter of the fleet.

Historical fishing patterns can provide an indication of the likelihood of affected entities making use of the opportunity of deep-setting in the EPO in the event of a closure in the WCPO.

The proportion of the U.S. fishery’s annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 2 percent to 22 percent, and averaged 11 percent. In 2005–2007, that proportion ranged from 2 percent to 11 percent, and may have been constrained by the IATTC-adopted bigeye tuna catch limits established by NMFS (no limit was in place for 2008). Prior to 2009, most of the U.S. annual bigeye tuna catch by longline vessels in the EPO typically was made in the second and third quarters of the year; in 2005–2008 the percentages caught in the first, second, third, and fourth quarters were 14, 33, 50, and 3 percent, respectively. These data demonstrate two historical patterns—that relatively little of the bigeye tuna catch in the longline fishery was typically taken in the EPO (11 percent in 2005–2008, on average), and that most EPO bigeye tuna catches were made in the second and third quarters, with relatively few catches in the fourth quarter when the proposed catch limit would most likely be reached. These two patterns suggest that there could be substantial costs for at least some affected entities that shift to deep-set fishing in the EPO in the event of a closure in the WCPO. On the other hand, fishing patterns since 2008 suggest that a substantial shift in deep-set fishing effort to the EPO could occur. In 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016 the proportions of the fishery’s annual bigeye tuna catches that were captured in the EPO were about 16, 27, 23, 19, 36, 35, 47, and 36 percent, respectively, and most bigeye tuna catches in the EPO were made in the latter half of the calendar years.

The NMFS study of the 2010 closure (Richmond *et al.* 2015) found that some businesses—particularly those with smaller vessels—were less inclined than others to fish in the EPO during the closure because of the relatively long distances that would need to be travelled in the relatively rough winter ocean conditions. The study identified a number of factors that likely made fishing in the EPO less lucrative than fishing in the WCPO during that part of the year, including fuel costs and the need to limit trip length in order to maintain fish quality and because of limited fuel storage capacity.

In addition to affecting the volume of landings of bigeye tuna and other species, the proposed catch limits could affect fish prices, particularly during a fishery closure. Both increases and decreases appear possible. After a limit is reached and landings from the WCPO are prohibited, ex-vessel prices of bigeye tuna (*e.g.*, that are caught in the EPO or by vessels in the longline fisheries of the

three U.S. Participating Territories), as well as of other species landed by the fleet, could increase as a result of the constricted supply. This would mitigate economic losses for vessels that are able to continue fishing and landing bigeye tuna during the closure. For example, the NMFS study of the 2010 closure (Richmond *et al.* 2015) found that ex-vessel prices during the closure in December were 50 percent greater than the average during the previous five Decembers. (It is emphasized that because it was an observational study, neither this nor other observations of what occurred during the closure can be affirmatively linked as effects of the fishery closure.)

Conversely, a WCPO bigeye tuna fishery closure could cause a decrease in ex-vessel prices of bigeye tuna and other products landed by affected entities if the interruption in the local supply prompts the Hawaii market to shift to alternative (*e.g.*, imported) sources of bigeye tuna. Such a shift could be temporary—that is, limited to 2018–2020—or it could lead to a more permanent change in the market (*e.g.*, as a result of wholesale and retail buyers wanting to mitigate the uncertainty in the continuity of supply from the Hawaii longline fisheries). In the latter case, if locally caught bigeye tuna fetches lower prices because of stiffer competition with imported bigeye tuna, then ex-vessel prices of local product could be depressed indefinitely. The NMFS study of the 2010 closure (Richmond *et al.* 2015) found that a common concern in the Hawaii fishing community prior to the closure in November 2010 was retailers having to rely more heavily on imported tuna, causing imports to gain a greater market share in local markets. The study found this not to have been borne out, at least not in 2010, when the evidence gathered in the study suggested that few buyers adapted to the closure by increasing their reliance on imports, and no reports or indications were found of a dramatic increase in the use of imported bigeye tuna during the closure. The study concluded, however, that the 2010 closure caused buyers to give increased consideration to imports as part of their business model, and it was predicted that tuna imports could increase during any future closure. To the extent that ex-vessel prices would be reduced by this action, revenues earned by affected entities would be affected accordingly, and these impacts could occur both before and after the limit is reached, and as described above, possibly after 2020.

The potential economic effects identified above would vary among individual business entities, but it is not

possible to predict the range of variation. Furthermore, the impacts on a particular entity would depend on both that entity's response to the proposed rule and the behavior of other vessels in the fleet, both before and after the catch limit is reached. For example, the greater the number of vessels that take advantage—before the limit is reached—of the first alternative opportunity (1), fishing as part of one of the Participating Territory's fisheries, the lower the likelihood that the limit would be reached.

The fleet's behavior in 2011 and 2012 is illustrative. In both those years, most vessels in the Hawaii fleet were included in a section 113(a) arrangement with the government of American Samoa, and as a consequence, the U.S. longline catch limit was not reached in either year. Thus, none of the vessels in the fleet, including those not included in the section 113(a) arrangements, were prohibited from fishing for bigeye tuna in the Convention Area at any time during those two years. The fleet's experience in 2010 (before opportunities under section 113(a) or Amendment 7 to the Pelagics FEP were available) provides another example of how economic impacts could be distributed among different entities. In 2010 the limit was reached and the WCPO bigeye tuna fishery was closed on November 22. As described above, dual permit vessels were able to continue fishing outside the U.S. EEZ around the Hawaiian Archipelago and benefit from the relatively high ex-vessel prices that bigeye tuna fetched during the closure.

In summary, based on potential reductions in ex-vessel revenues, NMFS has estimated that the upper bound of potential economic impacts of the proposed rule on affected longline fishing entities could be roughly \$160,000 per vessel per year, on average. The actual impacts to most entities are likely to be substantially less than those upper bounds, and for some entities the impacts could be neutral or positive (*e.g.*, if one or more Amendment 7 agreements are in place in 2018–2020 and the terms of the agreements are such that the U.S. longline fleet is effectively unconstrained by the catch limits).

2. FAD Restrictions

This element of the proposed rule would not establish any new reporting or recordkeeping requirements. The new requirement would be for affected vessel owners and operators to comply with the FAD restrictions described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble, including FAD

prohibition periods throughout the Convention Area from July 1 through September 30 in each of the years 2018–2020 and FAD prohibition periods just on the high seas in the Convention Area from November 1 through December 31 in each of the same years. There would also be a limit of 350 active FADs that may be deployed per vessel at any given time. Anecdotal information from the U.S. purse seine fishing industry indicates that U.S. purse seine vessels have not ever deployed more than 350 active FADs at any given time, so NMFS does not expect that the limit would be constraining or otherwise affect the behavior of purse seine operations, and it is not considered further in this IRFA.

Fulfillment of the element's requirements is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

The proposed FAD restrictions would substantially constrain the manner in which purse seine fishing could be conducted in the specified areas and periods in the Convention Area; in those areas and during those periods, vessels would be able to set only on free, or “unassociated,” schools.

With respect to the three-month FAD closure throughout the Convention Area: Assuming that sets would be evenly distributed through the year, the number of annual FAD sets would be expected to be about three-fourths the number that would occur without a seasonal FAD closure. For example, during 2014–2016, the proportion of all sets that were made on FADs when FAD setting was allowed was 50 percent. As an indicative example, if the fleet makes 8,000 sets in a given year (somewhat more than the 2014–2016 average of 7,420 sets per year) and 50 percent of those are FAD sets, it would make 4,000 FAD sets. If there is a three-month closure and 50 percent of the sets outside the closure are FAD sets, and sets are evenly distributed throughout each year, the annual number of FAD sets would be 3,000. This can be compared to the estimated 2,494 annual FAD sets that were made in 2014–2016, on average, when there were three-month FAD closures.

With respect to the two-month high seas FAD closure: The effects of this element are difficult to predict. If the high seas are closed to all purse seine fishing during November–December as a result of the fishing effort limit being reached, the high seas FAD closure during those two months would have no additional effect whatsoever. If the high seas are not closed to fishing, the

prohibition on FAD setting would make the high seas less favorable for fishing than they otherwise would be, because only unassociated sets would be allowed there. It is not possible to characterize how influential that factor would be, however. Thus, it is not possible to predict the effects in terms of the spatial distribution of fishing effort or the proportion of fishing effort that is made on FADs.

With respect to both the three-month FAD closure and two-month high seas FAD closure: As for the limits on fishing effort, vessel operators might choose to schedule their routine maintenance periods so as to take best advantage of the available opportunities for making FAD sets, such as during the FAD closures. However, the limited number of vessel maintenance facilities in the region might constrain vessel operators' ability to do this.

It is emphasized that the indicative example given above is based on the assumption that the FAD set ratio would be 50 percent during periods when FAD sets are allowed, as well as that sets are distributed evenly throughout the year. These assumptions are weak from several perspectives, so the results should be interpreted with caution. First, as described above, FAD set ratios have varied widely from year to year, indicating that the conditions that dictate “optimal” FAD set ratios for the fleet vary widely from year to year, and cannot be predicted with any certainty. Second, the optimal FAD set ratio during open periods might depend on how long and when those periods occur. For example, FAD fishing might be particularly attractive soon after a closed period during which FADs aggregated fish but were not fished on. These factors are not explicitly accounted for in this analysis, but the 50 percent FAD ratio used in this analysis was taken from 2014–2016, when there was a three-month FAD closure, so it is probably a better indicator for the action alternatives than FAD set ratios for years prior to 2009, when no seasonal FAD closures were in place. With respect to the distribution of sets through the year, the existence of collective limits on fishing effort might create an incentive for individual vessels to fish harder earlier in the year than they otherwise would, resulting in a “race to fish.” Limitations on fishing effort throughout the Convention Area could cause vessels to fish (irrespective of set type or the timing of FAD closures) harder earlier in a given year than they would without the limits. However, any such effect is not expected to be great, because most vessels in the fleet tend to fish virtually full time, leaving little

flexibility to increase fishing effort at any particular time of the year.

Vessels in the U.S. WCPO purse seine fleet make both unassociated sets and FAD sets when not constrained by regulation, so one type of set is not always more valuable or efficient than the other type. Which set type is optimal at any given time is a function of immediate conditions in and on the water, but probably also of such factors as fuel prices (unassociated sets involve more searching time and thus tend to bring higher fuel costs than FAD sets) and market conditions (*e.g.*, FAD fishing, which tends to result in greater catches of lower-value skipjack tuna and smaller yellowfin tuna and bigeye tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish). Clearly, the ability to do either type of set is valuable, and constraints on the use of either type can be expected to bring adverse economic impacts to fishing operations. Thus, the greater the constraints on the ability to make FAD sets, the greater the expected economic impacts of the action. Because the factors affecting the relative value of FAD sets and unassociated sets are many, and the relationships among them are not well known, it is not possible to quantify the expected economic impacts of the FAD restrictions. However, it appears reasonable to conclude the following: First, the FAD restrictions would adversely impact producer surplus relative to the no-action alternative. The fact that the fleet has made such a substantial portion of its sets on FADs in the past indicates that prohibiting the use of FADs in the specified areas and periods could bring substantial costs and/or revenue losses. Second, vessel operators might be able to mitigate the impacts of the FAD restrictions by scheduling their routine vessel and equipment maintenance during the FAD closures, but this opportunity might be constrained by the limited vessel maintenance facilities in the region.

3. Purse Seine Fishing Effort Limits

This element of the proposed rule would not establish any new reporting or recordkeeping requirements, but the existing “Daily FAD reports” required at 50 CFR 300.218(g) would be slightly revised, and renamed “Daily purse seine fishing effort reports” and would slightly modify the type of information collected.

There would be annual limits of 1,370 and 458 fishing days on the high seas and in the U.S. EEZ, respectively, in the Convention Area. In addition, there would be a mechanism to increase the

U.S. EEZ limit in a given year to 558 fishing days if 458 fishing days are used by October 1 of that year.

Fulfillment of this element’s requirements is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

Regarding the modification to the daily reporting requirement, the specific information required in the reports would be slightly modified from those of the existing “Daily FAD reports,” but the costs of compliance are not expected to change.

Regarding the fishing effort limits, if and when the fishery on the high seas or in the U.S. EEZ is closed as a result of a limit being reached in any of the years 2018–2020, owners and operators of U.S. purse seine vessels would have to cease fishing in that area for the remainder of the calendar year. Closure of the fishery in either of those areas could thereby cause foregone fishing opportunities and associated economic losses if the area contains preferred fishing grounds during such a closure. Historical fishing rates in the two areas give a rough indication of the likelihood of the limits being reached.

Regarding the U.S. EEZ, from 2009 through 2017 (NMFS has only preliminary estimates for 2017), no more than 50 percent of the proposed limit of 458 fishing days was ever used (and no more than the 41 percent of the possible limit of 558 fishing days). This history suggests a relatively low likelihood of the proposed EEZ limit being reached in 2018–2020. However, the allowance for an extra 100 fishing days if the 458 fishing days are used by October 1 could provide an incentive for the fleet to use more fishing days in the EEZ than it otherwise would. Furthermore, this would be the first time that separate limits would be established for the EEZ and the high seas, so the incentives for individual vessels in the fleet would change. A minority of the fleet is authorized to fish in the U.S. EEZ (8 of the 33 vessels currently licensed under the South Pacific Tuna Treaty (SPTT))¹ have fishery endorsements on their U.S. Coast Guard Certificates of Documentation, which are required to fish in the U.S. EEZ, and 1 of the other 4 purse seine vessels with WCPFC Area Endorsements has a fishery endorsement), and with a separate limit

¹ The majority of U.S. purse seine fishing activity in the Convention Area takes place in the waters of Pacific Island Parties to the SPTT (PIPs), pursuant to the terms of the SPTT.

for the U.S. EEZ, this minority might take more advantage of it than it has in the past.

Regarding the high seas from 2009 through 2017, between 31 and 135 percent of the proposed limit of 1,370 fishing days was used, and at least 100 percent was used in three of the nine years. In two years, 2015 and 2016, the ELAPS was closed for part of the year (starting June 15 in 2015, and September 2 in 2016), so more fishing effort might have occurred in those two years were there no limits. This history suggests a substantial likelihood of the proposed high seas limit being reached in any of the years 2018–2020.

Two factors could have a substantial influence on the amount of fishing effort in the U.S. EEZ and on the high seas in 2018–2020: First, the number of fishing days available in foreign waters (the fleet’s main fishing grounds) pursuant to the SPTT will influence the incentive to fish outside those waters, including the U.S. EEZ and high seas. Second, El Niño—Southern Oscillation (ENSO) conditions will influence where the best fishing grounds are.

Regarding fishing opportunities in foreign waters, in December 2016, the United States and PIPs agreed upon a revised SPTT, and under this new agreement U.S. purse seine fishing businesses can purchase fishing days in the EEZs of the PIPs. There are limits on the number of such “upfront” fishing days that may be purchased. These limits can influence the amount of fishing in other areas, such as the U.S. EEZ and the high seas, as well as the EPO. For example, if the number of available upfront fishing days is relatively small, fishing effort in the U.S. EEZ and/or high seas might be relatively great. In fact, the number of upfront days available for the Kiribati EEZ, which has traditionally constituted important fishing grounds for the U.S. fleet, is notably small—only 300 fishing days per year. However, the new SPTT regime provides for U.S. purse seine fishing businesses to purchase “additional” fishing days through direct bilateral agreements with the PIPs. NMFS cannot project how many additional days will be purchased in any given years, so cannot gauge how the limits on upfront days might influence fishing effort in the U.S. EEZ or on the high seas. Limits on upfront days are therefore not considered here any further.

Additionally, effective January 1, 2015, Kiribati prohibited commercial fishing in the Phoenix Islands Protected Area, which is a large portion of the Kiribati EEZ around the Phoenix Islands. These limitations in the Kiribati

EEZ in 2015 probably made fishing in the ELAPS more attractive than it otherwise would be.

Regarding El Niño Southern Oscillation (ENSO) conditions, the eastern areas of the WCPO tend to be comparatively more attractive to the U.S. purse seine fleet during El Niño events, when warm surface water spreads from the western Pacific to the eastern Pacific and large, valuable yellowfin tuna become more vulnerable to purse seine fishing and trade winds lessen in intensity. Consequently, the U.S. EEZ and high seas, much of which is situated in the eastern range of the fleet's fishing grounds, is likely to be more important fishing grounds to the fleet during El Niño events (as compared to neutral or La Niña events). This is supported by there being a statistically significant correlation between annual average per-vessel fishing effort in the ELAPS and the Oceanic Niño Index, a common measure of ENSO conditions, over the life of the SPTT through 2010.

El Niño conditions were present in 2015 and in the first half of 2016, and might have contributed to the relatively high rates of fishing in the ELAPS in those years. ENSO neutral conditions began in the latter half of 2016, and continued until the fourth quarter of 2017, when there was a shift to La Niña conditions, which persisted through early 2018 (and which is consistent with the moderate rates of fishing in the ELAPS in 2017). As of February 8, 2018, the National Weather Service states that a transition from La Niña to ENSO-neutral conditions is likely (~55 percent chance) in March–May of 2018 (NWS 2018). Thus ENSO conditions might have a negative influence on fishing in the U.S. EEZ and the high seas early in 2018 and a largely neutral influence for the rest of 2018. Their influence on fishing effort in 2019 and 2020 cannot be predicted with any certainty.

Another potentially important factor is that the EEZ and high seas limits would be competitive limits, so their establishment could cause a “race to fish” in the two areas. That is, vessel operators might seek to take advantage of the limited number of fishing days available in the areas before the limits are reached, and fish harder in the ELAPS than they would if there were no limits. On the one hand, any such race-to-fish effect might be reflected in the history of fishing in the ELAPS, described above. On the other hand, anecdotal information from the fishing industry suggests that the limits might have been internally allocated by the fleet, which might have tempered any race to fish. It is not known whether the

industry intends to internally allocate the proposed limits.

In summary, although difficult to predict, either the U.S. EEZ or high seas limits could be reached in any of the years 2018–2020, especially the high seas limits. If either limit is reached in a given year, the fleet would be prohibited from fishing in that area for the remainder of the calendar year.

The closure of any fishing grounds for any amount of time can be expected to bring adverse impacts to affected entities (*e.g.*, because the open area might, during the closed period, be less productive than the closed area, and vessels might use more fuel and spend more time having to travel to open areas). The severity of the impacts of a closure would depend greatly on the length of the closure and where the most favored fishing grounds are during the closure. A study by NMFS (Chan, V. and D. Squires. 2016. Analyzing the economic impacts of the 2015 ELAPS closure. NMFS Internal Report) estimated that the overall losses to the combined sectors of the vessels, canneries and vessel support companies from the 2015 ELAPS closure ranged from \$11 million and \$110 million depending on the counterfactual period considered. These results suggest that there were impacts from the ELAPS closure on the American Samoa economy and a connection between U.S. purse seine vessels and the broader American Samoa economy.

If either the U.S. EEZ or high seas is closed, possible next-best opportunities for U.S. purse seine vessels fishing in the WCPO include fishing in the other of the two areas, fishing in foreign EEZs inside the Convention Area, fishing outside the Convention Area in EPO, and not fishing.

With respect to fishing in the U.S. EEZ or on the high seas: If the U.S. EEZ were closed, the high seas would be available to the fleet until its limit is reached. If the high seas were closed, the U.S. EEZ would be available until its limit is reached, but only for the vessels with fishery endorsements on their Certificates of Documentation (currently 9, including 8 vessels with SPTT licenses and one additional vessel without).

With respect to fishing in the Convention Area in foreign EEZs: As described above, under the SPTT the fleet might have substantial fishing days available in the Pacific Island country EEZs that dominate the WCPO, but it is not possible to predict how many fishing days will be available to the fleet as a whole or to individual fishing businesses.

With respect to fishing in the EPO: The fleet has generally increased its fishing operations in the EPO since 2014, and as of 2017, there were 17 purse seine vessel in the WCPO fleet that are also listed on the IATTC Vessel Register. In order to fish in the EPO, a vessel must be on the IATTC's Regional Vessel Register and categorized as active (50 CFR 300.22(b)), which involves fees of about \$14.95 per cubic meter of well space per year (*e.g.*, a vessel with 1,200 m³ of well space would be subject to annual fees of \$17,940). (As an exception to this rule, an SPTT-licensed vessel is allowed to make one fishing trip in the EPO each year without being categorized as active on the IATTC Regional Vessel Register. The trip must not exceed 90 days in length, and there is an annual limit of 32 such trips for the entire SPTT-licensed fleet (50 CFR 300.22(b)(1)).) The number of U.S. purse seine vessels in the WCPO fleet that have opted to be categorized as such has increased in the last few years from zero to 17, probably largely a result of constraints on fishing days in the WCPO and/or uncertainty in future access arrangements under the SPTT. This suggests an increasing attractiveness of fishing in the EPO, in spite of the costs associated with doing so. However, in 2018 vessels probably will not have the opportunity to fish in the EPO year-round. To implement a recent decision of the IATTC, NMFS has published a final rule that requires purse seine vessels to choose between two EPO fishing prohibition periods each year in 2018–2020: July 29–October 8 or November 9–January 19 (72 days in either case). Thus, the opportunity to fish in the EPO might be constrained, depending on when the U.S. EEZ and/or high seas in the WCPFC Area is closed, and which EPO closure period a given vessel operator chooses.

With respect to not fishing at all during a closure of the U.S. EEZ or high seas: This would mean a loss of any revenues from fishing. However, many of the vessels' variable operating costs would be avoided in that case, and it is possible that for some vessels a portion of the time might be used for productive activities like vessel and equipment maintenance.

The opportunity costs of engaging in next-best opportunities in the event of a closure are not known, so the potential impacts cannot be quantified. However, to give an indication of the magnitude of possible economic impacts to producers in the fishery (*i.e.*, an indication of the upper bound of those impacts), information on revenues per day is provided here.

The last five years for which catch estimates for the U.S. WCPO purse seine fleet are available are 2012–2016. Those estimates, adjusted to an indicative fleet size of 35 vessels, equate to annual average catches of skipjack tuna, yellowfin tuna, and bigeye tuna of 236,077 mt, 24,802 mt, and 4,213 mt, respectively, or 265,091 mt in total. Applying an indicative current Bangkok cannery price for skipjack tuna of \$1,500 per mt to all three species, the value of annual fleet-wide catches at 2012–2016 average levels would be about \$398 million, equivalent to a little more than \$1 million per calendar day, on average. It should be noted that cannery prices are fairly volatile; for example, cannery prices are much lower now than prices during most of 2017.

In addition to the effects described above, the proposed limits could affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Since the limits would apply fleet-wide—that is, they would not be allocated to individual vessels—vessel operators might have an incentive to fish harder in the affected areas earlier in each calendar year than they otherwise would. Such a race-to-fish effect might also be expected in the time period between when a closure of the fishery is announced and when it is actually closed, which would be at least seven calendar days. To the extent such temporal shifts occur, they could affect the seasonal timing of fish catches and deliveries to canneries. The timing of cannery deliveries by the U.S. fleet alone (as it might be affected by a race to fish in the EEZ or high seas) is unlikely to have an appreciable impact on prices, because many canneries in the Asia-Pacific region and elsewhere buy from the fleets of multiple nations. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would not. This could bring costs in terms of the health and safety of the crew as well as the economic performance of the vessel.

4. Eastern High Seas Special Management Area

This element of the proposed rule would remove a reporting/recordkeeping requirement, the requirement to notify NMFS when entering and exiting the EHSSMA. It would also establish a prohibition on transshipment in the EHSSMA.

Fulfillment of this element's requirements is not expected to require any professional skills that the vessel owners and operators do not already

possess. The costs of complying with the requirements are described below to the extent possible.

Regarding the entry/exit notices, when NMFS established the requirement in 2012 (final rule published December 3, 2012; 77 FR 71501), it estimated that each report would require about 15 minutes of labor (at a labor cost of about \$60 per hour) and no more than \$1 in communication costs, for an estimated total cost of compliance of about \$16 per notice. At that time, NMFS estimated that each longline vessel would enter and exit the EHSSMA between zero and approximately four times per year (requiring 0–8 notices per year at an annual cost of \$0–128), each purse seine vessel would do so between zero and approximately two times per year (requiring 0–4 notices per year at an annual cost of \$0–64), and each albacore troll vessel would do so between zero and two times per year (requiring 0–4 notices per year at an annual cost of \$0–64). According to the notices received by NMFS, zero longline vessels and zero albacore troll vessels have entered the EHSSMA from 2013 through 2017, and there have been nine entries/exits by purse seine fishing vessels. In any case, under the proposed rule, commercial fishing vessels would be relieved of about \$16 in compliance costs each time they enter or exit the EHSSMA.

Disproportionate Impacts

As described above, the type of the impacts would vary greatly among fishing gear types (*i.e.*, longline versus albacore troll versus purse seine), and the magnitude of the impacts also could vary greatly by fishing gear type (but they are difficult to quantify and compare). Nevertheless, all the affected entities in the longline and albacore troll fishing sectors are small entities, so there would be no disproportionate impacts between small and large entities within those sectors. In the purse seine fishing sector, slightly more than half the affected entities are small entities. The direct effect of the proposed rule would be to constrain fishing effort by purse seine fishing vessels, with consequent constraining effects on both revenues (because catches would be less) and operating costs (because less fishing would be undertaken). Although some purse seine fishing entities are larger than others, NMFS is not aware of any differences between the small entities and the large entities (as defined by the RFA) in terms of their capital costs, operating costs, or other aspects of their businesses. Accordingly, there is no information to suggest that the direct adverse economic impacts on small

purse seine entities would be disproportionately greater than those on large purse seine entities.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations.

Alternatives to the Proposed Rule

NMFS has sought to identify alternatives that would minimize the proposed rule's economic impacts on small entities ("significant alternatives"). Taking no action could result in lesser adverse economic impacts than the proposed action for affected entities (but as described below, for some affected longline entities, the proposed rule could be more economically beneficial than no-action), but NMFS does not prefer the no-action alternative, because it would be inconsistent with the United States' obligations under the Convention. Alternatives identified for each of the four elements of the proposed rule are discussed below.

1. Longline Bigeye Tuna Catch Limits

NMFS has not identified any significant alternatives for this element of the proposed rule, other than the no-action alternative.

2. FAD Restrictions

NMFS considered in detail one alternative to this element of the proposed rule, but only with respect to the timing of the two-month FAD closure for the high seas. CMM 2017–01 allows members to choose either November–December, as in this proposed rule, or April–May. NMFS has compared the expected direct economic impacts of the two alternatives on purse seine fishing businesses in the regulatory impact review for the proposed rule. The analysis finds that a November–December closure is more likely to have a lesser direct economic impact on those businesses than an April–May closure, primarily because the later closure period is more likely to run concurrently with a closure of the high seas in the Convention Area to purse seine fishing (if the fishing effort limit in this proposed rule is reached), in which case the FAD closure would bring no additional economic impacts.

3. Purse Seine Fishing Effort Limits

In the past, NMFS implemented the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ adopted by the Commission as a single combined limit in the ELAPS. For this

proposed rule, in light of CMM 2017–01’s provision allowing the United States to transfer some of its EEZ fishing days to the high seas, there is a need to separately account for the U.S. high seas limit and the U.S. EEZ limit. Thus, combining the two limits into a single limit for the ELAPS is not a practical alternative, and NMFS has not considered it in detail.

4. Eastern High Seas Special Management Area

NMFS has not identified any significant alternatives for this element of the proposed rule, other than the no-action alternative.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the daily report of purse seine effort information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**), and by email to OIRA_Submission@omb.eop.gov or fax to 202–395–5806. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 4, 2018.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.211, add definition “Active FAD” to read as follows:

§ 300.211 Definitions.

Active FAD is a FAD that is equipped with a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position.

■ 3. In § 300.217, revise paragraph (b)(1) to read as follows:

§ 300.217 Vessel identification.

(b) * * *

(1) Vessels shall be marked in accordance with the identification requirements of § 300.336(b)(2), and if an IRCS has not been assigned to the vessel, then the Federal, State, or other documentation number used in lieu of the IRCS must be preceded by the characters “USA” and a hyphen (that is, “USA-”).

■ 4. In § 300.218, revise paragraphs (a)(2)(v) and (g) to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

(a) * * *

(2) * * *

(v) *High seas fisheries.* Fishing activities subject to the reporting requirements of § 300.341 must be maintained and reported in the manner specified in § 300.341(a).

(g) *Daily purse seine fishing effort reports.* If directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, for the period and in the format and manner

directed by the Pacific Islands Regional Administrator, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, the activity of the vessel (e.g., setting, transiting, searching), location and type of set, if a set was made during that day.

* * * * *

■ 5. In § 300.222, revise paragraphs (v), (w), (oo), and (pp) as follows:

§ 300.222 Prohibitions.

* * * * *

(v) Use a fishing vessel equipped with purse seine gear to fish in an area closed to purse seine fishing under § 300.223(a).

(w) Set a purse seine around, near or in association with a FAD or a vessel, deploy, activate, or service a FAD, or use lights in contravention of § 300.223(b).

* * * * *

(oo) Transship in the Eastern High Seas Special Management Area in contravention of § 300.225.

(pp) Fail to submit, or ensure submission of, a daily purse seine fishing effort report as required in § 300.218(g).

* * * * *

■ 6. In § 300.223, revise paragraphs (a), (b)(1) and (2), and add paragraph (b)(3) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) *Fishing effort limits.* This paragraph establishes limits on the number of fishing days that fishing vessels of the United States equipped with purse seine gear may operate in the Convention Area in the area between 20° N latitude and 20° S latitude in a calendar year.

(1) For the high seas there is a limit of 1,370 fishing days per calendar year.

(2) For the U.S. EEZ there is a limit of 458 fishing days per calendar year. If NMFS expects that this limit will be reached by October 1 in a given calendar year, NMFS will publish a notice in the **Federal Register** increasing the limit for that calendar year to 558 fishing days no later than seven days prior to October 1.

(3) NMFS will determine the number of fishing days spent on the high seas and in the U.S. EEZ in each calendar year using data submitted in logbooks and other available information. After NMFS determines that a limit in a calendar year is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a notice in the **Federal Register** announcing that the purse seine fishery

in the area where the limit is expected to be reached will be closed starting on that specific future date and will remain closed until the end of the calendar year.

(4) Once a fishery closure is announced pursuant to paragraph (a)(3) of this section, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the closed area during the period specified in the **Federal Register** notice, except that such vessels are not prohibited from bunkering during a fishery closure.

* * * * *

(b) * * *

(1) During the periods and in the areas specified in paragraph (b)(2) of this section, owners, operators, and crew of fishing vessels of the United States equipped with purse seine gear shall not do any of the activities described below in the Convention Area in the area between 20° N latitude and 20° S latitude:

(i) Set a purse seine around a FAD or within one nautical mile of a FAD.

(ii) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.

(iii) Deploy a FAD into the water.

(iv) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that:

(A) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and

(B) A FAD may be removed from the water and if removed may be repaired, cleaned, maintained, or otherwise serviced, provided that it is not returned to the water.

(v) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage:

(A) Submerge lights under water;

(B) Suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or;

(C) Direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

(2) The requirements of paragraph (b)(1) of this section shall apply:

(i) From July 1 through September 30, in each calendar year;

(ii) In any area of high seas, from November 1 through December 31, in each calendar year.

(3) *Activating FADs for purse seine vessels.* (i) A vessel owner, operator, or crew of a fishing vessel of the United States equipped with purse seine gear shall turn on the tracking equipment of an active FAD while the FAD is onboard the vessel and before it is deployed in the water.

(ii) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of a fishing vessel of the United States equipped with purse seine gear shall not have more than 350 drifting active FADs per vessel in the Convention Area at any one time.

* * * * *

■ 7. In § 300.224, revise paragraph (a)(1) and remove paragraph (a)(2) to read as follows:

§ 300.224 Longline fishing restrictions.

(a) * * *

(1) There is a limit of 3,554 metric tons of bigeye tuna per calendar year that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States.

* * * * *

■ 8. Revise § 300.225 to read as follows:

§ 300.225 Eastern High Seas Special Management Area.

The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS is prohibited from engaging in transshipment in the Eastern High Seas Special Management Area.

[FR Doc. 2018-09896 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 83, No. 91

Thursday, May 10, 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

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee (RAC) will meet in Ketchikan, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: https://cloudapps-usda-gov.secure.force.com/FSSRS/RAC_Page?id=0010000002JcvNAAS.

DATES: The meeting will be held on May 24, 2018, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Ketchikan Supervisor's Office, Second Floor Conference Room, 648 Mission Street, Ketchikan, Alaska. A conference line will be set up for those who would like to listen in by telephone. For the conference call number, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect

comments received at the Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Marla Booth, Acting RAC Coordinator, by phone at (907) 228-4133 or via email at mjbooth@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Monitor ongoing SRS Title II funded projects;
2. Make recommendations for changes to ongoing projects, and
3. Conduct new business.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by close of business on May 8, 2018, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Marla J Booth, Acting RAC Coordinator, Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to mjbooth@fs.fed.us, or via facsimile to (907) 225-8738.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 22, 2018.

Christopher French,
Associate Deputy Chief, National Forest System.

[FR Doc. 2018-09921 Filed 5-9-18; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Strategic Economic and Community Development—Reservation of Fiscal Year 2018 Program Funds

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: Section 6025 of the Agricultural Act of 2014 (2014 Farm Bill) provides the Secretary of Agriculture the authority to give priority to projects that support strategic economic development or community development plans. The Agency has the authority to reserve funds for those programs (referred to as the “underlying programs”) included in Strategic Economic and Community Development (SECD), for projects that support multijurisdictional strategic economic and community development plans. This Notice supersedes the SECD fiscal year 2016 (FY) notice that published on March 17, 2016 and identifies that for FY 2018 the Agency will utilize priority points under the SECD provisions, as opposed to set-aside funding.

DATES: To apply for SECD priority points, applicants must submit Form RD 1980-88, “Strategic Economic and Community Development (section 6025) Priority,” by the underlying program application deadlines or September 30, 2018, whichever comes first.

ADDRESSES: Submit Form RD 1980-88 to the USDA Rural Development Area Office servicing the area where the project is located. A list of the USDA Rural Development Area Offices can be found listed by state at: <http://www.rd.usda.gov/browse-state>.

FOR FURTHER INFORMATION CONTACT: For more information, please contact your respective Rural Development State Office listed here: <http://www.rd.usda.gov/browse-state>. A checklist of all required application information for Section 6025 SECD can be found at: <https://www.rd.usda.gov/programs-services/strategic-economic-and-community-development>.

For all other inquiries, contact Regional Community Economic Development Coordinators as follows:

- Midwest Region—Christine Sorensen: 202-568-9832, Christine.Sorensen@wdc.usda.gov.
- Northeast Region—Angela Callie: 610-791-9810 ext. 123, Angela.Callie@wdc.usda.gov.
- Southern Region—Greg Dale: (870) 633-3055 Ext. 123, Gregory.Dale@wdc.usda.gov.
- Western Region—Tim O'Connell: (503) 414-3396, Tim.Oconnell@wdc.usda.gov.
- National Office—Jamie Davenport, Rural Development Innovation Center, U.S. Department of Agriculture, Stop 3254, 1400 Independence Avenue SW, Washington, DC 20250-0783, Telephone: 202-720-0002. Email: Jamie.Davenport@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866, as amended by Executive Order 13258.

Background

On March 17, 2016, the Agency published in the **Federal Register** (81 FR 14420) set-aside percentages for each of the underlying programs for which SECD priority points were available. As stated in that Notice, the percentage of funds reserved for SECD were to remain in effect for “each succeeding fiscal year unless changed in accordance with 7 CFR 1980.1004(b).”

The Agency has determined that several factors indicate the use of priority points for SECD projects is more desirable than set-aside funds this fiscal year. The factors are: (1) Priority points may be awarded through September 30, as opposed to June 30 for set-aside funds; (2) the level of demand for reserved funding in prior years; and (3) projects resulting from regional partnerships will be more strongly encouraged.

A. Applications

Applicants seeking FY 2018 funds for projects that support multijurisdictional plans will be eligible for SECD priority points. Applicants must (1) meet the eligibility requirements of the underlying program based on its annual notice, policies and/or regulations, including application deadlines; (2) meet the underlying program's return on investment requirements outlined in the notice of funding availability, as applicable; (3) meet the eligibility requirements of 7 CFR part 1980, subpart K; and (4) submit Form RD 1980-88 and supporting documentation.

B. Form RD 1980-88

To be considered for SECD priority points, applicants must submit a complete Form RD 1980-88. Applicants are encouraged to submit Form RD 1980-88 and supporting documentation concurrent with the application for the underlying program for which the applicant is applying, in an effort to avoid improper or duplicative awards to recipients as required by law.

Form RD 1980-80 requests such information as (see 7 CFR 1980.1015):

- Identification of whether the applicant includes a State, county, municipal, or tribal government;
- Identification by name of the plan being supported by the project, the date the plan became effective and is to remain in effect, and a detailed description of how the project directly supports one or more of the plan's objectives;
- Sufficient information to show that the project will be carried out solely in a rural area; and
- Identification of any current or previous applications the applicant has submitted for funds from the underlying programs.

If an applicant has already submitted a FY 2018 application for one of the underlying programs and the applicant wishes to be considered for SECD priority points, the applicant must submit Form RD 1980-88 by close of business on the date listed in the **DATES** section of this Notice for that program.

If an applicant has not submitted a FY 2018 application for one of the underlying programs and that program is still accepting applications for FY 2018 funding, the applicant must submit Form RD 1980-88 at the same time the applicant submits the application material for the underlying program.

Failure to submit a complete Form RD 1980-88 may result in not receiving SECD priority points.

C. Award Process

The Agency will score applications seeking SECD priority points in accordance with the procedures specified in 7 CFR 1980.1020. In accordance with 7 CFR 1980.1025, those applications, whose score will include any SECD priority points awarded for the entire fiscal year, will compete for program funding with all other program applications that do not seek SECD priority points using the award process for the applicable underlying program.

D. Reporting Requirements

Applicants whose applications with SECD priority points are selected for

funding are required to submit information in accordance with 7 CFR 1980.1026.

USDA Non-Discrimination 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 How to File a Program Discrimination Complaint 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) 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: May 2, 2018.

Anne Hazlett,

Assistant to the Secretary, Rural Development.

[FR Doc. 2018-09912 Filed 5-9-18; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-842]

Large Residential Washers From Mexico: Final Results of the Expedited First Five-Year Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, Commerce finds that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

DATES: Applicable May 10, 2018.

FOR FURTHER INFORMATION CONTACT: Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4952.

SUPPLEMENTARY INFORMATION:**Background**

On February 15, 2013, Commerce published its antidumping duty order on large residential washers from Mexico in the **Federal Register**.¹ On January 2, 2018, Commerce initiated the first sunset review of the antidumping duty order on large residential washers from Mexico, in accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act).² Commerce received a notice of intent to participate from Whirlpool Corporation (Whirlpool), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ Whirlpool claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of large residential washers.

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. As a result, the revised deadline for the final results of this review is now May 7, 2018.⁴

Commerce received a substantive response from Whirlpool⁵ within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On February 23, 2018, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁶ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this antidumping duty order.

Scope of the Order

The products covered by the *Order* are all large residential washers and certain subassemblies thereof from Mexico. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff Schedule of the United States (HTSUS).

Products subject to this *Order* may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.⁷

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of dumping, and the magnitude of the margins of dumping likely to prevail if this order were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System

(ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty *Order* on large residential washers from Mexico would be likely to lead to continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 72.41 percent.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year (sunset) review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: May 4, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018-09948 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-DS-P

¹ See *Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders*, 78 FR 11148 (February 15, 2013) (*Order*).

² See *Initiation of Five-Year (Sunset) Review*, 83 FR 100 (January 2, 2018) (*Initiation*).

³ See Letter from Whirlpool re: "Five-Year ('Sunset') Review of Antidumping and Countervailing Duty Orders on Large Residential Washers from Mexico and the Republic of Korea: Notice of Intent to Participate," dated January 17, 2018.

⁴ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

⁵ See Letter from Whirlpool re: "Five-Year ('Sunset') Review of Antidumping Duty Order on Large Residential Washers from Mexico: Substantive Response of Whirlpool Corporation to the Notice of Initiation of First Sunset Review," dated February 5, 2018 (Whirlpool Substantive Response).

⁶ See Letter re: "Sunset Reviews Initiated on January 2, 2018," dated February 23, 2018.

⁷ For a complete description of the Scope of the *Order*, see Memorandum "Issues and Decision Memorandum for the Final Results of First Sunset Review of the Antidumping Duty Order on Large Residential Washers from Mexico," dated concurrently with this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG226

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting via webinar.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a webinar of its Observer Policy Committee on Friday, May 25, 2018 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Friday, May 25, 2018 at 9:30 a.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/5227766963198472449>. Call in information: +1 (562) 247-8321, Attendee Access Code: 664-515-251.

ADDRESSES: The meeting will be held via webinar.

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 Committee will review the draft National Marine Fisheries Service Procedural Directive on cost allocation in electronic monitoring programs for federally managed U.S. Fisheries, and consider a response. Other business will be discussed if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. 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: May 7, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-09953 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG235

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 Groundfish 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 Friday, June 1, 2018 at 9 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Four Points by Sheraton, 1 Audubon Road, Wakefield, MA 01880; Phone: (781) 245-9300.

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 committee will discuss the Amendment 23/Groundfish Monitoring draft alternatives and Plan Development Team (PDT) work related to the development of the action and make recommendations to the Council on the draft alternatives. The committee will also review Framework Adjustment 58 PDT work to date and make recommendations to the Council on items to include in the action (to be initiated at the June Council meeting). They will also review the Groundfish Advisory Panel recommendations and make recommendations to the Council.

Other business will 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 date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 7, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-09956 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore (Permit No. 21419 and Permit No. 21251), Courtney Smith

(Permit No. 21321), and Shasta McClenahan (14450-05, 14856-06, 16239-03, 17312-01, 18636-01, and 20556-01); at (301) 427-8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal**

Register notice that announced our receipt of the application and a complete description of the research, go to www.federalregister.gov and search on the permit number provided in the table below.

Permit No.	RIN	Applicant	Previous Federal Register notice	Permit or amendment issuance date
14450-05	0648-XS35	NMFS Southeast Fisheries Science Center (Responsible Party: Bonnie Ponwith, Ph.D.), 75 Virginia Beach Drive, Miami, FL 33149.	82 FR 55804; November 24, 2017.	April 23, 2018.
14856-06	0648-XB157 ..	Bruce R. Mate, Ph.D., Hatfield Marine Science Center, Oregon State University, Newport, OR 97365.	82 FR 55804; November 24, 2017.	April 23, 2018.
16239-03	0648-XC268 ..	Dan Engelhaupt, Ph.D., 1209 Independence Blvd., Virginia Beach, VA 23455.	82 FR 55804; November 24, 2017.	April 23, 2018.
17312-03	0648-XC268 ..	Scripps Institution of Oceanography (Responsible Party: John Hildebrand, Ph.D.), University of California, 8635.	82 FR 55804; November 24, 2017.	April 23, 2018.
18636-01	0648-XE075 ..	Discovery Way, La Jolla, CA 92093		
		Iain Kerr, D.H.L., Ocean Alliance, 32 Horton Street, Gloucester, MA 01930.	82 FR 55804; November 24, 2017.	April 23, 2018.
20556-01	0648-XF508 ..	Georgia Department of Natural Resources (Responsible Party: Jonathan Ambrose), 2070 U.S. Highway 278 Southeast, Social Circle, GA 30025.	82 FR 32328; July 13, 2017	April 30, 2018.
21251	0648-XG039 ..	Waikiki Aquarium (Responsible Party: Dr. Andrew Rossiter), 2777 Kalakaua Avenue, Honolulu, HI 96815.	83 FR 7455; February 21, 2018.	April 30, 2018.
21321	0648-XG047 ..	Pacific Whale Foundation (Responsible Party: Stephanie Stack, M.Sc.), 300 Maalaea Road, Suite 211, Wailuku, HI 96793.	83 FR 8655; February 28, 2018.	April 23, 2018.
21419	0648-XG029 ..	Shannon Atkinson, Ph.D., University of Alaska Fairbanks, 17101 Point Lena Loop Road, Juneau, AK 99801.	83 FR 7454; February 21, 2018.	April 23, 2018.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed in Permit Nos. 20556-01, 21251, 21321, and 21419 are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

For Permit Nos. 14450-05, 14856-06, 16239-03, 17312-01, and 18636-01, an environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit amendments would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on April 23, 2018.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and

policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), as applicable.

Dated: May 7, 2018.

Julia Marie Harrison,
Chief, Permits and Conservation Division,
Office of Protected Resources, National
Marine Fisheries Service.

[FR Doc. 2018-09959 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG227

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 Herring 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 31, 2018 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339-2200.

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 Herring Committee will review draft white paper on consideration of federal management for river herring and shad stocks and provide recommendations for the Council to consider at their June 2018 meeting. They will also have an initial discussion of measures to include in 2019-2021

herring fishery specification action. The Committee will review and provide input on a rebuilding action being developed by the Mid-Atlantic Fishery Management Council that could potentially modify accountability measures in the mackerel fishery. Other business may be discussed if 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. 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: May 7, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-09954 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG197

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public webinar meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a one-day webinar meeting to address the Council's Terms of Reference contained in the agenda in the **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will be held on May 29, 2018, from 8 a.m. to 5 p.m., Eastern Standard Time.

ADDRESSES: You may join the SSC Webinar meeting from a computer, tablet or smartphone by entering the following address: <https://global.gotomeeting.com/join/374054789>. You can also dial in using your phone. United States: +1 (408) 650-3123, Access Code: 374-054-789. If joining from a video-conferencing room or system dial 67.217.95.2##374054789 Cisco devices: 374054789@67.217.95.2.

The meeting may be extended from, or completed prior to the time established in this notice.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918-1903; telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The agenda will consist of the discussion of the following Terms of Reference:

1. Confirm the landings year sequence to be used to calculate the sustainable yield level (SYL) for Puerto Rico recreational jacks;
2. Clarify the process for calculating SYL and acceptable biological catch (ABC) for stock complexes with two indicator species (Tier 4a);
3. Finalize indicator species selection for Grouper Unit 5 and Snapper Unit 3 in St. Croix and for Grouper Unit 4 in St. Thomas/St. John;
4. Reconsider tier assignment for Grouper Unit 4 (St. Thomas/St. John) and Grouper Unit 5 (St. Croix) presently assigned to Tier 4b;
5. Reconsider ad hoc ABC for St. Croix queen conch;
6. Determine whether to use the alternative year sequences for St. Croix and St. Thomas/St. John proposed by the Southeast Fisheries Science Center (Tiers 4a and 4b);
7. For each stock/complex included in Tier 4b, a) establish scalar for determining SYL, and b) finalize scientific uncertainty buffer for SYL to ABC;
8. Clarify whether to include an additional buffer reduction to account for scientific uncertainty resulting from the reallocation of unspecified landings (Tiers 4a and 4b);
9. Address the Council's directive to remove additional reductions proposed by the SSC to be applied to the SYL for ecologically important species; and
10. Address the summary report from the February/March 2018 SSC meeting.

This webinar meeting will be chaired by Dr. Richard Appeldoorn and moderated by Atty. Jocelyn D'Ambrosio.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918-1903, telephone: (787) 766-5926, at least 5 days prior to the meeting date.

Dated: May 7, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-09951 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG224

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a public hearing via webinar for Reef Fish Amendment 49—Modifications to the Sea Turtle Release Gear and Framework Procedure for the Reef Fish Fishery.

DATES: The webinar will take place on Thursday, May 31, 2018. The webinar will begin at 6 p.m. and conclude no later than 9 p.m. EDT.

ADDRESSES: The meeting will take place via webinar; see below for webinar link. Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348-1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie M. Simmons, Deputy Director, Gulf of Mexico Fishery Management Council; carrie.simmons@gulfcouncil.org; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION:

Thursday, May 31, 2018; beginning at 6 p.m. and concluding no later than 9 p.m., EDT.

The Gulf of Mexico Fishery Management Council is holding a webinar public hearing to review Reef Fish Amendment 49: Modifications to the Sea Turtle Release Gear and Framework Procedure for the Reef Fish

Fishery. Council staff will brief the public on the document's two actions. The first action considers modifying the regulations to allow three new approved sea turtle release gears as well as clarify a minimum size limit for a current gear requirement. This action applies to commercial and charter/headboat vessels with federal Gulf reef fish permits.

The second action would modify the framework procedure to allow new gears to be approved for use without a full amendment to the fishery management plan in the future. Staff will then open the meeting for questions and public comments.

You may register for the Public Hearing: Reef Fish Amendment 49 meeting on Thursday, May 31, 2018 at: <https://attendee.gotowebinar.com/register/506074454971112707>.

The meeting will be broadcast via webinar. You may listen in by registering for the webinar by visiting www.gulfcouncil.org and clicking on the Public Hearing: Reef Fish Amendment 49 meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on www.gulfcouncil.org as they become available.

Dated: May 7, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-09952 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG234

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 Groundfish 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 Thursday, May 31, 2018 at 9:30 a.m.

ADDRESSES: Meeting address: The meeting will be held at the Four Points

by Sheraton, 1 Audubon Road, Wakefield, MA 01880; phone: (781) 245-9300.

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 Advisory Panel will discuss the Amendment 23/Groundfish Monitoring draft alternatives and Plan Development Team (PDT) work related to the development of the action, and make recommendations to the Groundfish Committee on the draft alternatives. The panel will also review Framework Adjustment 58 PDT work to date and make recommendations to the Groundfish Committee on items to include in the action (to be initiated at the June Council meeting). Other business will 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. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: May 7, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-09955 Filed 5-9-18; 8:45 am]

BILLING CODE 3510-22-P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, May 17, 2018, 10:00 a.m.–12:00 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: Decisional Matter: Fiscal Year 2018 Mid-Year Review.

A live webcast of the Meeting can be viewed at <https://www.cpsc.gov/live>.

CONTACT PERSON FOR MORE INFORMATION: Rockelle Hammond, Office of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7923.

Dated: May 8, 2018.

Alberta E. Mills,
Secretary.

[FR Doc. 2018-10095 Filed 5-8-18; 4:15 pm]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2009-OS-0160]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, DOD.

ACTION: 30-day information collection notice.

SUMMARY: The Department of Defense 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 11, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at oir_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571-372-0493, or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Industrial Capabilities

Questionnaire; DD Form 2737; OMB Control Number 0704-0377.

Type of Request: Reinstatement.

Number of Respondents: 12,800.

Responses per Respondent: 1.

Annual Responses: 12,800.

Average Burden per Response: 12 hours.

Annual Burden Hours: 153,600 hours.

Needs and Uses: The information collection requirement is necessary to provide the adequate industrial capability analyses to indicate a diverse, healthy, and competitive industrial base capable of meeting Department demands. Additionally, the information is required to perform the industrial assessments required by Chapter 148, Section 2502 of Title 10 of the U.S.C. and to support development of a defense industrial base information system as required by Section 722 of the 1992 Defense Production Act, as amended, and Section 802 of Executive Order 12919.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID 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 ID number, and title for this **Federal Register** document. The general policy for comments and other 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.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: May 7, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018-09940 Filed 5-9-18; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2018-ICCD-0056]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for TRIO Training Program for Federal TRIO Programs

AGENCY: Department of Education (ED), Office of Postsecondary Education (OPE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before June 11, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2018-ICCD-0056. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216-34, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Suzanne Ulmer, 202-453-7691.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that

is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application package for TRIO Training Program for Federal TRIO Programs.

OMB Control Number: 1840-0814.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 46.

Total Estimated Number of Annual Burden Hours: 1,452.

Abstract: This information collection provides the U.S. Department of Education with information needed to evaluate, score and rank the quality of the projects proposed by institutions of higher education and public or private nonprofit agencies and organizations applying for a TRIO Training grant, in accordance with Title IV, Part A, Subpart 2, Section 402G of the Higher Education Act of 1965, as amended (HEA), which requires the collection of specific information and data necessary for applicants to receive an initial competitive grant and a non-competing grant for the second year.

Dated: May 7, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018-09941 Filed 5-9-18; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the

following meetings related to the transmission planning activities of Tucson Electric Power Company, UNS Electric, Inc., Public Service Company of New Mexico, Arizona Public Service Company, El Paso Electric Company, Black Hills Power, Inc., Black Hills Colorado Electric Utility Company, LP, Cheyenne Light, Fuel, & Power Company, NV Energy, Inc., and Xcel Energy Services, Inc. on behalf of Public Service Company of Colorado:

Planning Management Committee

Meeting

May 9, 2018, 9 a.m.–3 p.m. (MDT)

Planning Management Committee

Meeting

June 13, 2018, 9 a.m.–3 p.m. (MDT)

The May 9, 2018 Planning Management Committee Meeting will be held at: Energy Strategies, 215 State St. #200, Salt Lake City, UT 84111.

The June 13, 2018 Planning Management Committee Meeting will be held at: Xcel Energy, 1800 Larimer St., Denver, CO 80202.

The above-referenced meetings will be available via web conference and teleconference.

The above-referenced meetings are open to stakeholders.

Further information may be found at <http://www.westconnect.com/>.

The discussions at the meetings described above may address matters at issue in the following proceeding: ER13–75, *Public Service Company of Colorado, et al.*

For more information contact Nicole Cramer, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6775 or nicole.cramer@ferc.gov.

Dated: May 4, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–09965 Filed 5–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD18–8–000]

Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene: Davis and Weber Counties Canal Company

On April 27, 2018, Davis and Weber Counties Canal Company filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act

(FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed West Point Pump Station Micro-hydropower Project would have an installed capacity of 8 kilowatts (kW), and would be located along Davis and Weber Counties Canal Company's secondary irrigation system. The project would be located near the Town of West Point in Davis County, Utah.

Applicant Contact: Richard Smith, General Manager, Davis and Weber Counties Canal Company, 138 West 1300 North, Sunset, UT 84015; Phone No. (801) 774–6373.

FERC Contact: Robert Bell, Phone No. (202) 502–6062; Email: robert.bell@ferc.gov.

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) Two new generating units that have a total generating capacity of 8 kW, housed in a pump return pipeline to a storage reservoir; and (2) appurtenant facilities. The proposed project would have an estimated annual generation of 6 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ...	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed hydroelectric project will utilize an existing irrigation pipeline, the primary purpose of which is to deliver lawn and garden pressure irrigation water to these same counties to Davis and Weber Counties. The addition of the West Point Pump Station Micro-hydropower Project will not alter the conduit's primary purpose. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in

all capital letters the “COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY” or “MOTION TO INTERVENE,” as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.¹ All comments contesting Commission staff's preliminary determination that the

¹ 18 CFR 385.2001–2005 (2017).

facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may

also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the "eLibrary" link. Enter the docket number (*i.e.*, CD18-8) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659.

Dated: May 4, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-09964 Filed 5-9-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD18-7-000]

Davis and Weber Counties Canal Company; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On April 27, 2018, Davis and Weber Counties Canal Company filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act

of 2013 (HREA). The proposed Canal Station 603+00 Micro-hydropower Project would have an installed capacity up to 8 kilowatts (kW), and would be located along the four-foot wide by six-foot long section of the open irrigation canal. The project would be located near the Town of Sunset in Davis County, Utah.

Applicant Contact: Richard Smith, General Manager, Davis and Weber Counties Canal Company, 138 West 1300 North, Sunset, UT 84015; Phone No. (801) 774-6373.

FERC Contact: Robert Bell, Phone No. (202) 502-6062; Email: robert.bell@ferc.gov.

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) Two new generating units plus two future units, approximately four-foot wide by six-foot long, placed in an open channel of the Davis & Weber Canal with a total generating capacity of up to 8 kW; and (2) appurtenant facilities. The proposed project would have an estimated annual generation of 17.5 megawatt-hours, and may include two additional units in the future.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ...	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed hydroelectric project will utilize the Davis and Weber Canal, the primary purpose of which is to deliver agricultural and irrigation water to Davis and Weber counties. The addition of the Canal Station 603+00 Micro-hydropower Project will not alter the conduit's primary purpose. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the

Commission's regulations.¹ All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the "eLibrary" link. Enter the docket number (*i.e.*, CD18-7) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659.

Dated: May 4, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-09963 Filed 5-9-18; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9977-65-OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2018 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed preliminary calculations for the first round of allocations of allowances from the CSAPR new unit set-asides (NUSAs) for the 2018 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA will consider timely objections to the preliminary calculations (including objections concerning the identification of units eligible for allocations) before determining the final amounts of the first-round allocations.

DATES: Objections to the information referenced in this notice must be received on or before June 11, 2018.

ADDRESSES: Submit your objections via email to CSAPR_NUSA@epa.gov. Include "2018 NUSA allocations" in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Kenon Smith at (202) 343-9164 or smith.kenon@epa.gov or Jason Kuhns at (202) 564-3236 or kuhns.jason@epa.gov.

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_x Annual), 97.511(b) and 97.512 (NO_x Ozone Season Group 1), 97.611(b) and 97.612 (SO₂ Group 1), 97.711(b) and 97.712 (SO₂ Group 2), and 97.811(b) and 97.812 (NO_x Ozone Season Group 2). Each NUSA allowance allocation process involves up to two rounds of allocations to eligible units, termed "new" units, followed by the allocation to "existing" units of any allowances not allocated to new units.

This notice concerns preliminary calculations for the first round of NUSA

allowance allocations for the 2018 control periods. Generally, the allocation procedures call for each eligible unit to receive a first-round 2018 NUSA allocation equal to its 2017 emissions as reported under 40 CFR part 75 unless the total of such allocations to all eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis.

The detailed unit-by-unit data and preliminary allowance allocation calculations are set forth in Excel spreadsheets titled "CSAPR_NUSA_2018_NO_x_Annual_1st_Round_Prelim_Data", "CSAPR_NUSA_2018_NO_x_OS_1st_Round_Prelim_Data", and "CSAPR_NUSA_2018_SO₂_1st_Round_Prelim_Data," available on EPA's website at <https://www.epa.gov/csapr/new-unit-set-aside-notice-data-availability-nusa-noda-cross-state-air-pollution-rule>. Each of the spreadsheets contains a separate worksheet for each state covered by that program showing, for each unit identified as eligible for a first-round NUSA allocation, (1) the unit's emissions in the 2017 control period (annual or ozone season as applicable), (2) the maximum first-round 2018 NUSA allowance allocation for which the unit is eligible (typically the unit's emissions in the 2017 control period), (3) various adjustments to the unit's maximum allocation, many of which are necessary only if the NUSA pool is oversubscribed, and (4) the preliminary calculation of the unit's first-round 2018 NUSA allowance allocation.

Each state worksheet also contains a summary showing (1) the quantity of allowances initially available in that state's 2018 NUSA, (2) the sum of the first-round 2018 NUSA allowance allocations that will be made to new units in that state, assuming there are no corrections to the data, and (3) the quantity of allowances that would remain in the 2018 NUSA for use in second-round allocations to new units (or ultimately for allocation to existing units), again assuming there are no corrections to the data.

Objections should be strictly limited to the data and calculations upon which the NUSA allowance allocations are based and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) Precise identification of the specific data and/or calculations the commenter believes are inaccurate, (2) new proposed data and/or calculations upon which the commenter believes EPA should rely instead to determine allowance allocations, and (3) the reasons why EPA should rely on the commenter's

¹ 18 CFR 385.2001-2005 (2017).

proposed data and/or calculations and not the data referenced in this notice.

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), and 97.811(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b).)

Dated: April 30, 2018.

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2018-09785 Filed 5-9-18; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0798]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of

Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 9, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0798.

Title: FCC Application for Radio Service Authorization; Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.
Form Number: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and households; Business or other for-profit entities; Not-for-profit institutions; and State, local or tribal governments.

Number of Respondents and Responses: 253,320 respondents and 253,320 responses.

Estimated Time per Response: 0.5–1.25 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535 and 554.

Total Annual Burden: 222,055 hours.

Total Annual Cost: \$71,306,250.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application form that is used for market-based and site-based licensing for wireless telecommunications services, including public safety licenses, which are filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form that

contains administrative information and a series of schedules used for filing technical and other information. This form is used to apply for a new license, to amend or withdraw a pending application, to modify or renew an existing license, cancel a license, request a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change), request a Special Temporary Authority or Developmental License. Respondents are encouraged to submit FCC Form 601 electronically and are required to do so when submitting FCC Form 601 to apply for an authorization for which the applicant was the winning bidder in a spectrum auction.

The data collected on FCC Form 601 includes the FCC Registration Number (FRN), which serves as a "common link" for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires entities filing with the Commission to use an FRN.

The FCC Form 601 is being revised by Sections 90.35, 90.20 and 90.175 to require third party disclosures by wireless license applicants proposing to operate a vehicular repeater units on designated frequencies. They are required to obtain written concurrence of a frequency coordinator. This information submitted as an attachment to FCC form 601 will be used by Commission personnel in evaluating the applicant's need for such frequencies and to minimize the interference potential to other stations operating on the proposed frequencies.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018-09972 Filed 5-9-18; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements

at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012479–002.

Title: Maersk/CMA CGM WCCA

Vessel Sharing Agreement.

Parties: Maersk Line A/S and CMA CGM S.A.

Filing Party: Wayne Rohde; Cozen O'Connor; 1200 19th Street NW; Washington, DC 20036.

Synopsis: The amendment deletes Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft KG as a party and replaces it with Maersk Line A/S, changes the name of the Agreement, and restates the Agreement.

Agreement No.: 201103–013.

Title: Memorandum Agreement of the Pacific Maritime Association of December 14, 1983 Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs, As Amended, Through May 1, 2018.

Parties: Pacific Maritime Association.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1200 19th Street NW; Washington, DC 20036.

Synopsis: The amendment revises how the man-hour base assessment will be calculated.

Dated: May 7, 2018.

Rachel E. Dickon,

Secretary.

[FR Doc. 2018–09936 Filed 5–9–18; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Keith E. Doss, Holt, Missouri, individually, and as trustee of the Keith*

E. Doss Revocable Trust dated February 8, 2018; to retain voting shares of Trustco Bankshares, Inc., Kearney, Missouri, and thereby retain shares of Kearney Trust Company, Kearney, Missouri.

Additionally, Janice A. Doss, Holt, Missouri, individually, and as trustee of the Janice A. Doss Revocable Trust dated February 8, 2018, to retain shares of Trustco Bankshares, Inc.

Board of Governors of the Federal Reserve System, May 7, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–09944 Filed 5–9–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project “Medical Office Survey on Patient Safety Culture Database.”

DATES: Comments on this notice must be received by July 9, 2018.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT:

Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Office Survey on Patient Safety Culture Database

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection. In 1999, the Institute of Medicine called for health care organizations to develop a “culture of safety” such that their

workforce and processes focus on improving the reliability and safety of care for patients (IOM, 1999; *To Err is Human: Building a Safer Health System*). To respond to the need for tools to assess patient safety culture in health care, AHRQ developed and pilot tested the Medical Office Survey on Patient Safety Culture with OMB approval (OMB NO.0935–0131; Approved July 5, 2007).

The survey is designed to enable medical offices to assess provider and staff perspectives about patient safety issues, medical error, and error reporting. The survey includes 38 items that measure 10 composites of patient safety culture. In addition to the composite items, 14 items measure staff perceptions of how often medical offices have problems exchanging information with other settings as well as other patient safety and quality issues. AHRQ made the survey publicly available along with a Survey User's Guide and other toolkit materials in December, 2008 on the AHRQ website (located at <https://www.ahrq.gov/sops/quality-patient-safety/patientsafetyculture/medical-office/index.html>).

The AHRQ Medical Office SOPS Database consists of data from the AHRQ Medical Office Survey on Patient Safety Culture and may include reportable, non-required supplemental items. Medical offices in the U.S. can voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The Medical Office SOPS Database (OMB NO. 0935–0196, last approved on August 25, 2015) was developed by AHRQ in 2011 in response to requests from medical offices interested in tracking their own survey results. Those organizations submitting data receive a feedback report, as well as a report of the aggregated, de-identified findings of the other medical offices submitting data. These reports are used to assist medical office staff in their efforts to improve patient safety culture in their organizations.

Rationale for the information collection. The Medical Office SOPS and the Medical Office SOPS Database support AHRQ's goals of promoting improvements in the quality and safety of health care in medical office settings. The survey, toolkit materials, and database results are all made publicly available on AHRQ's website. Technical assistance is provided by AHRQ through its contractor at no charge to medical offices, to facilitate the use of these materials for medical office patient safety and quality improvement.

Request for information collection approval. The Agency for Healthcare Research and Quality (AHRQ) requests

that the Office of Management and Budget (OMB) reapprove, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the AHRQ Medical Office SOPS Database; OMB NO. 0935-0196, last approved on August, 25, 2015.

This database will:

(1) Present results from medical offices that voluntarily submit their data,

(2) Provide data to medical offices to facilitate internal assessment and learning in the patient safety improvement process, and

(3) Provide supplemental information to help medical offices identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of health care services; quality measurement and improvement; and database development. 42 U.S.C. 299a(a)(1), (2), and (8).

Method of Collection

To achieve the goal of this project the following activities and data collections will be implemented:

(1) *Eligibility and Registration Form*—The medical office point-of-contact (POC) completes a number of data submission steps and forms, beginning with the completion of an online Eligibility and Registration Form. The purpose of this form is to collect basic demographic information about the medical office and initiate the registration process.

(2) *Data Use Agreement*—The purpose of the data use agreement, completed by the medical office POC, is to state how data submitted by medical offices will be used and provide privacy assurances.

(3) *Medical Office Site Information Form*—The purpose of the site information form, also completed by the medical office POC, is to collect background characteristics of the medical office. This information will be used to analyze data collected with the Medical Office SOPS survey.

(4) *Data Files Submission*—POCs upload their data file(s), using the medical office data file specifications, to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted. The number of submissions to the database is likely to vary each year because medical offices do not administer the survey and submit data every year. Data submission is typically handled by one POC who is either an office manager or a survey vendor who contracts with a medical office to collect their data. POCs submit data on behalf of 35 medical offices, on average, because many medical offices are part of a health system that includes many medical office sites, or the POC is a vendor that is submitting data for multiple medical offices.

Survey data from the AHRQ Medical Office Survey on Patient Safety Culture are used to produce three types of products:

(1) A Medical Office SOPS Database Report that is made publicly available on the AHRQ website (see Medical Office User Database Report);

(2) Individual Medical Office Survey Feedback Reports that are customized for each medical office that submits data to the database; and

(3) Research data sets of individual-level and medical office-level de-identified data to enable researchers to conduct analyses. All data released in a data set are de-identified at the individual-level and the medical office-level.

Medical offices will be invited to voluntarily submit their Medical Office SOPS survey data to the database. AHRQ's contractor, Westat, then cleans and aggregates the data to produce a PDF-formatted Database Report displaying averages, standard deviations, and percentile scores on the survey's 38 items and 10 patient safety culture composites of patient safety culture, and 14 items measuring how often medical offices have problems exchanging information with other settings and other patient safety and quality issues. The report also displays these results by medical office characteristics (size of office, specialty, geographic region, etc.) and respondent characteristics (staff position).

The Database Report includes a section on data limitations, emphasizing

that the report does not reflect a representative sampling of the U.S. medical office population. Because participating medical offices will choose to voluntarily submit their data into the database and therefore are not a random or national sample of medical offices, estimates based on this self-selected group might be biased estimates. We recommend that users review the database results with these caveats in mind.

Each medical office that submits its data receives a customized survey feedback report that presents their results alongside the aggregated results from other participating medical offices.

Medical offices use the Medical Office SOPS, Database Reports, and Individual Medical Office Survey Feedback Reports for a number of purposes, to:

- Raise staff awareness about patient safety;
- Elucidate and assess the current status of patient safety culture in their medical office;
- Identify strengths and areas for patient safety culture improvement;
- Evaluate trends in patient safety culture change over time; and
- Evaluate the cultural impact of patient safety initiatives and interventions.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. An estimated 70 POCs, each representing an average of 35 individual medical offices each, will complete the database submission steps and forms. Each POC will submit the following:

- Eligibility and registration form (completion is estimated to take about 3 minutes).
- Data Use Agreement (completion is estimated to take about 3 minutes).
- Medical Office Information Form (completion is estimated to take about 5 minutes).
- Survey data submission will take an average of one hour.

The total burden is estimated to be 283 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be \$14,880 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility/Registration Form	70	1	3/60	4

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Data Use Agreement	70	1	3/60	4
Medical Office Information Form	70	35	5/60	205
Data Files Submission	70	1	1	70
Total	NA	NA	NA	283

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate * (\$)	Total cost burden (\$)
Registration Form	70	4	52.58	210
Data Use Agreement	70	4	52.58	210
Medical Office Information Form	70	205	52.58	10,779
Data Files Submission	70	70	52.58	3,680
Total	NA	213	NA	14,880

* Mean hourly wage rate of \$52.58 for Medical and Health Services Managers (SOC code 11-9111) was obtained from the May 2016 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 621100—Offices of Physicians located at <https://www.bls.gov/oes/current/oes119111.htm>.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Francis D. Chesley, Jr.,
Acting Deputy Director.

[FR Doc. 2018-09934 Filed 5-9-18; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-18-0572; Docket No. CDC-2018-0026]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Health Message Testing System (HMTS)*. The Health Message Testing System (HMTS), a Generic information collection, that enables programs across CDC to collect the information they require in a timely manner.

DATES: CDC must receive written comments on or before July 9, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2018-0026 by any of the following methods:

- *Federal eRulemaking Portal:* [Regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to [Regulations.gov](https://www.regulations.gov).

Please note: Submit all comments through the Federal eRulemaking portal ([regulations.gov](https://www.regulations.gov)) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed

extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Health Message Testing System (HMTS) 0920-0572—Reinstatement—Office of the Associate Director for Communication (OADC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Before CDC disseminates a health message to the public, the message always undergoes scientific review. Even though the message is based on sound scientific content, there is no guarantee that the public will understand a health message or that the message will move people to take a recommended action. Communication theorists and researchers agree that for health messages to be as clear and influential as possible, target audience members or representatives must be involved in developing the messages, and provisional versions of the messages must be tested with members of the target audience.

Increasingly, there are circumstances when CDC must move swiftly to protect life, prevent disease, or calm public anxiety. Health message testing is even more important in these instances, because of the critical nature of the information need.

In the interest of timely health message dissemination, many programs

forgo the important step of testing messages on dimensions such as clarity, salience, appeal, and persuasiveness (*i.e.*, the ability to influence behavioral intention). Skipping this step avoids the delay involved in the standard OMB review process, but at a high potential cost. Untested messages can waste communication resources and opportunities because the messages can be perceived as unclear or irrelevant. Untested messages can also have unintended consequences, such as jeopardizing the credibility of Federal health officials.

The Health Message Testing System (HMTS), a generic information collection, enables programs across CDC to collect the information they require in a timely manner to:

- Ensure quality and prevent waste in the dissemination of health information by CDC to the public.
- Refine message concepts and to test draft materials for clarity, salience, appeal, and persuasiveness to target audiences.
- Guide the action of health communication officials who are responding to health emergencies, Congressionally-mandated campaigns with short timeframes, media-generated public concern, time-limited communication opportunities, trends, and the need to refresh materials or dissemination strategies in an ongoing campaign.
- Ensure each testing instrument will be based on specific health issues or topics.

Although it is not possible to develop one instrument for use in all instances, the same kinds of questions are asked in most message testing. This package includes generic questions and formats that can be used to develop health message testing data collection instruments. These include a list of screening questions, comprised of demographic and introductory questions, along with other questions that can be used to create a mix of relevant questions for each proposed message testing data collection method. However, programs may request to use additional questions if needed.

Message testing questions will focus on issues such as comprehension, impressions, personal relevance, content and wording, efficacy of response, channels, and spokesperson/sponsor. Such information will enable message developers to enhance the effectiveness of messages for intended audiences.

Data collection methods proposed for HMTS includes intercept interviews, telephone interviews, focus groups, online surveys, and cognitive

interviews. In almost all instances, data will be collected by outside organizations under contract with CDC.

For many years CDC programs have used HMTS to test and refine message concepts and test draft materials for clarity, salience, appeal, and persuasiveness to target audiences. Having this generic clearance available has enabled them to test their information and get critical health information out to the public quickly. Over the last three years, more than 30 messages have been tested using this clearance. Examples of use of the HMTS mechanism include:

(1) Domestic Readiness Initiative on Zika Virus Disease—Year 2 Core Campaign Materials. As part of the mission of CDC's Domestic Readiness Initiative on the Zika Virus Disease, CDC collected information to inform an outcome evaluation to determine the extent to which the campaign affected awareness, attitudes, and intention to follow recommended behaviors at different points during the campaign. The goal of the evaluation was to better understand awareness of campaign activities, how people perceive Zika as a health risk, and assess their uptake of recommended health behaviors, such as applying insect repellent, using condoms, and wearing long-sleeved clothing.

(2) Assessing Perception and Use of CDC Guideline for Prescribing Opioids for Chronic Pain. The purpose of this collection is to assess primary care physician's perceptions and use of communication materials and products associated with the CDC Guideline for Prescribing Opioids for Chronic Pain. Information collected can assist in the most effective use of CDC communication resources and opportunities by assessing clarity, salience, appeal, persuasiveness and effectiveness of materials promoting the dissemination and implementation of the Guideline. Specifically, CDC seeks to understand how primary care physicians perceive, need, and implement the Guideline to make prescribing decisions; how they need, obtain, and use supplementary and promotional Guideline materials developed by CDC for professional development or patient education; and what attitudinal and structural barriers may inhibit primary care provider adoption of the recommendations in the Guideline.

Over 10,000 respondents were queried and over 4,500 burden hours used during the most recent approval period. Because the availability of this ICR has been so critical to programs in disseminating their materials and

information to the public in a timely manner, OADC is requesting a three year extension of this information

collection. The estimated annualized Burden Hours are 2,470. There is no

cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Public Health Professionals, Health Care Providers, State and Local Public Health Officials, Emergency Responders, General Public.	Moderator's Guides, Eligibility Screeners, Interview Guides, Opinion Surveys, Consent Forms.	18,525	1	8/60	2,470
Total .....	.....	.....	.....	.....	2,470

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018-09918 Filed 5-9-18; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-18-0740]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Medical Monitoring Project (MMP) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on [insert August 22, 2017] to obtain comments from the public and affected agencies. CDC received 1 comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to omb@cdc.gov. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Medical Monitoring Project (MMP)—(OMB No. 0920-0740 Exp: 6/30/2018)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Division of HIV/AIDS Prevention (DHAP) requests a revision of the currently approved Information Collection Request: "Medical Monitoring Project" expiring June 30, 2018. This data collection addresses the need for national estimates of access to and utilization of HIV-related medical care and services, the quality of HIV-related ambulatory care, and HIV-related behaviors and clinical outcomes.

For the proposed project, the same data collection methods will be used as for the currently approved project. Data would be collected from a probability sample of HIV-diagnosed adults in the U.S. who consent to an interview and abstraction of their medical records. As for the currently approved project, de-identified information would also be extracted from HIV case surveillance records for a dataset, referred to as the minimum dataset, which is used to assess non-response bias, for quality control, to improve the ability of MMP to monitor ongoing care and treatment of HIV-infected persons, and to make inferences from the MMP sample to HIV-diagnosed persons nationally. No other Federal agency collects such nationally representative population-based information from HIV-diagnosed adults. The data are expected to have significant implications for policy, program development, and resource allocation at the state/local and national levels.

The changes proposed in this request update the data collection system to meet prevailing information needs and enhance the value of MMP data, while remaining within the scope of the currently approved project purpose. The result is a 11% reduction in burden, or a reduction of 786 total burden hours annually. Specifically, the removal of three unfunded project areas reduces the number of interviews conducted and the number of persons for whom healthcare facility staff will be asked for contact information, assistance with approaching for participation, and pulling medical records.

Changes were made that did not affect the burden, listed below:

- Sampled persons found to have resided in a non-funded project area on the date of sampling will be considered ineligible for the project, because non-funded project areas were deemed ineligible in the first stage of sampling.

- Tracking data reports will no longer be sent to CDC, as this information is no longer needed.

- The average token of appreciation for participants has been increased from \$25 to \$50.

- Non-substantive changes have been made to recruitment materials to decrease the reading comprehension level, simplify and standardize procedures, and incorporate a user-friendly eligibility checklist.

- Changes have been made to the respondent consent form to decrease the reading comprehension level and clarify whom participants should contact for different concerns.

- Forty-three data elements were removed from the minimum data set and thirty-seven data elements were added. Because these data elements are

extracted from the HIV surveillance system from which they are sampled, these changes do not affect the burden of the project.

- Revisions to the interview questionnaire were made to improve coherence, boost the efficiency of the data collection, and increase the relevance and value of the information. Based on an evaluation of the currently approved MMP interview instrument 118 questions were added to the interview form and 221 questions were removed. However, the average amount of time to complete the interview did not change.

- Thirty-nine data elements were removed from the MRA data structure because they were not found to be useful. No new elements were added.

Because the medical records are abstracted by MMP staff, these changes do not affect the burden of the project.

This proposed data collection would supplement the National HIV Surveillance System (NHSS, OMB Control No. 0920-0573, Exp. 6/30/2019) in 23 selected state and local health departments, which collect information on persons diagnosed with, living with, and dying from HIV infection and AIDS.

Through their participation, respondents will help to improve programs to prevent HIV infection as well as services for those who already have HIV. The total burden hours are 6,354 hours. The participation of respondents is voluntary. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response
Sampled, Eligible HIV-Infected Persons	Interview Questionnaire (att 8a)	7,760	1	45/60
Facility office staff looking up contact information.	Look up contact information	1,940	1	2/60
Facility office staff approaching sampled persons for enrollment.	Approach persons for enrollment	970	1	5/60
Facility office staff pulling medical records	Pull medical records	7,760	1	3/60

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018-09914 Filed 5-9-18; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-FY-0556; Docket No. CDC-2018-0037]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing

information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled "Assisted Reproductive Technology (ART) Program Reporting" that collects information on ART cycles to publish information on pregnancy success rates as required under Section 2(a) of the Federal Clinic Success Rate and Certification Act (FCSRCA).

DATES: CDC must receive written comments on or before July 9, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2018-0037 by any of the following methods:

- Federal eRulemaking Portal:** *Regulations.gov*. Follow the instructions for submitting comments.

- Mail:** Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Assisted Reproductive Technology (ART) Program Reporting System—Extension—(OMB# 0920–0556, exp. 7/31/2018). National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 2(a) of Public Law 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), 42 U.S.C. 263a–1(a)) requires that each assisted reproductive technology (ART) program shall annually report to the Secretary through the Centers for Disease Control and Prevention: (1) Pregnancy success rates achieved by such ART program, and (2)

the identity of each embryo laboratory used by such ART program and whether the laboratory is certified or has applied for such certification under the Act. The required information is currently reported by ART programs to CDC as specified in the Assisted Reproductive Technology (ART) Program Reporting System (OMB no. 0920–0556, exp. 7/31/2018). CDC seeks to extend OMB approval for a period of three years. The revised total burden estimate is lower than under the previous approval, due to removal of the burden associated with a one-time system upgrade that was completed under the prior approval. However, some of this burden reduction will be offset by an increase in the number of ART clinics and cycles reported, due to an increase in the utilization of ART in the United States.

The currently approved program reporting system, also known as the National ART Surveillance System (NASS), includes information about all ART cycles initiated by any of the ART programs in the United States. An ART cycle is considered to begin when a woman begins taking ovarian stimulatory drugs or starts ovarian monitoring with the intent of having embryos transferred; for each cycle. CDC collects information about the pregnancy outcome, as well as a number of data items deemed by experts in the field to be important to explain variability in success rates across ART programs and individuals.

Each ART program reports its annual ART cycle data to CDC in mid-December. The annual data reporting consists of information about all ART cycles that were initiated in the previous calendar year. For example, the December 2017 reports described

ART cycles that were initiated between January 1, 2016, and December 31, 2016. Data elements and definitions currently in use reflect CDC's prior consultations with representatives of the Society for Assisted Reproductive Technology (SART), the American Society for Reproductive Medicine, and RESOLVE: the National Infertility Association (a national, nonprofit consumer organization), as well as a variety of individuals with expertise and interest in this field.

The estimated number of respondents (ART programs or clinics) is 464, based on the number of clinics that provided information in 2015; the estimated average number of responses (ART cycles) per respondent is 350. Additionally, approximately 5–10% of responding clinics will be randomly selected each year to participate in data validation and quality control activities; an estimated 35 clinics will be selected to report validation data on 70 cycles each on average. Finally, respondents may provide feedback to CDC about the usability and utility of the reporting system. The option to participate in the feedback survey is presented to respondents when they complete their required data submission. Participation in the feedback survey is voluntary and is not required by the FCSRCA. CDC estimates that 75% of ART programs will participate in the feedback survey.

The collection of ART cycle information allows CDC to publish an annual report to Congress as specified by the FCSRCA and to provide information needed by consumers. OMB approval is requested for three years and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
(ART programs or clinics	NASS	464	350	42/60	113,680
	Data Validation	35	70	23/60	939
	Feedback Survey	348	1	2/60	12
Total .....	.....	.....	.....	.....	114,631

Jeffrey M. Zirger,
Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–09916 Filed 5–9–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-N-1415]

Framework for Assessment of Drug-Drug Interactions for Therapeutic Proteins; Establishment of a Public Docket; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to assist with its development of a policy/guidance document on the assessment of drug-drug interactions (DDIs) for therapeutic proteins (TPs). The Agency split the 2012 DDI draft guidance into two draft guidance documents published in October 2017: “In Vitro Metabolism- and Transporter-Mediated Drug-Drug Interaction Studies” and “Clinical Drug Interaction Studies—Study Design, Data Analysis, and Clinical Implications.” The two guidance documents focus on enzyme- and transporter-based DDIs and do not include a discussion on TPs, which was originally included in the 2012 guidance. The Agency is currently revisiting the framework for assessment of DDIs for TPs outlined in the draft 2012 DDI guidance to offer timely and actionable information pertaining to DDIs for TPs and is seeking public input to assist in updating or creating a new framework.

DATES: Although you can comment at any time, to ensure that the Agency considers your comment in our development of recommendations, submit either electronic or written information and comments by July 9, 2018.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** 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-2018-N-1415 for “Framework for Assessment of Drug-Drug Interactions for Therapeutic Proteins.” 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.

FOR FURTHER INFORMATION CONTACT:

Regarding human prescription drugs: Julie Chronis, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3203, Silver Spring, MD 20993-0002, 301-796-1200.

Regarding human prescription biological products: 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

Concurrent use of more than one prescription drug is common. A Centers for Disease Control and Prevention survey reports that about 20 percent of U.S. adults take three or more prescription drugs; and among adults age 65 and older, 40 percent take five or more medications.¹ Taking more than one drug at a time can result in DDIs which can result in toxicities or loss of efficacy. It is impractical to evaluate the impact of every possible drug combination. Therefore, the FDA

¹ Centers for Disease Control and Prevention's National Health and Nutrition Examination Survey: <https://www.cdc.gov/nchs/data/has/has16.pdf#079>.

follows a systematic risk-based approach for DDI assessment.

Two draft guidance documents, when finalized, which are intended to assist drug developers in the planning and evaluation of the DDI potential of their drug during development were published in October 2017 entitled “Clinical Drug Interaction Studies—Study Design, Data Analysis, and Clinical Implications,” and “In Vitro Metabolism- and Transporter-Mediated Drug-Drug Interaction Studies.”² These two draft guidances replaced the 2012 draft guidance entitled “Drug Interaction Studies—Study Design, Data Analysis, Implications for Dosing, and Labeling Recommendations.” The 2017 draft guidance documents focus on enzyme- and transporter-based DDIs; however, they do not discuss TPs.

The 2012 guidance recommended DDI assessment for TPs in three scenarios: (1) For cytokine or cytokine modulators, (2) for a known or suspected mechanism of DDI not related to effects on Cytochrome P450 enzymes or transporters, and (3) for when a TP is used in combination with another drug. The Agency now plans to revisit the previous framework for the assessment of DDIs for TPs that was included in the 2012 draft guidance. We are seeking public input on the revision and development of a framework to address DDIs for TPs with the goal of publishing this framework in a short policy/guidance document.

II. Additional Issues for Consideration and Request for Information

Interested persons are invited to provide detailed information and comments on the approach to the DDI assessment of TPs. Please read the information above regarding the submission of comments and confidential information. FDA is particularly interested in responses to the following overarching questions:

1. In what scenarios/circumstances and for which classes of TPs should DDI assessment be performed? Please provide rationale for your suggestions including available data and scientific principles to inform the considerations.

² “Clinical Drug Interaction Studies—Study Design, Data Analysis, and Clinical Implications” can be found at <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM292362.pdf>; provide comments to this guidance using docket number FDA-2017-D-596.

“In Vitro Metabolism- and Transporter-Mediated Drug-Drug Interaction Studies” can be found at <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM581965.pdf>; provide comments to this guidance using docket number FDA-2017-D-5961.

2. For circumstances when DDI assessments are necessary:

a. What types of assessments can be useful (e.g., in vitro studies, dedicated clinical studies, population pharmacokinetic analyses, physiologically based pharmacokinetic analyses)? Please discuss the challenges and limitations with each type of assessment, and, as necessary, organize any discussions by the class of TP.

b. What are the study design considerations (e.g., population, analytes) for the types of assessments discussed in bullet 2a. above? Please describe the rationale for any design considerations proposed.

FDA will consider all information and comments submitted.

Dated: May 4, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-09931 Filed 5-9-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-D-2513]

S3A Guidance: Note for Guidance on Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies: Focus on Microsampling—Questions and Answers; International Council for Harmonisation; 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 guidance entitled “S3A Guidance: Note for Guidance on Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies: Focus on Microsampling—Questions and Answers.” The guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. This question-and-answer (Q&A) guidance provides additional information to facilitate interpretation of the guideline for industry “S3A Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies” (S3A guidance), especially to address the benefit and use of microsampling techniques in main study animals. The Q&A guidance is intended to provide points to consider before incorporating the microsampling

method in toxicokinetic studies and acknowledges the benefits (and some limitations) of the use of microsampling.

DATES: The announcement of the guidance is published in the **Federal Register** on May 10, 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-2016-D-2513 for “S3A Guidance: Note for Guidance on Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies: Focus on Microsampling—Questions and Answers.” 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 this 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 the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), 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 that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Aisar Atrakchi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4118, Silver Spring, MD 20993–0002, 301–796–1036; or Anne Pilaro, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 4023, Silver Spring, MD 20993–0002, 240–402–8341.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993–0002, 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, regulatory authorities and industry associations from around the world have participated in many important initiatives to promote international harmonization of regulatory requirements under the ICH. FDA has participated in several ICH meetings designed to enhance harmonization, and FDA is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and reduce differences in technical requirements for drug development among regulatory agencies.

ICH was established to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; FDA; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a

member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers. The Assembly is responsible for the endorsement of draft guidelines and adoption of final guidelines. FDA publishes ICH guidelines as FDA guidance.

In the **Federal Register** of September 8, 2016 (81 FR 62141), FDA published a notice announcing the availability of a draft guidance entitled “ICH S3A Guidance: Note for Guidance on Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies—Questions and Answers.” The notice gave interested persons an opportunity to submit comments by December 7, 2016.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies in November 2017.

The Q&A guidance provides additional information to facilitate interpretation of the S3A guidance. The S3A guidance has been successfully implemented since 1994, and in recent years, analytical method sensitivity has improved, allowing microsampling techniques to be used in toxicokinetic assessment. This Q&A guidance focuses on points to consider before incorporating the microsampling method in toxicokinetic studies, acknowledges the benefits (and some limitations) of the use of microsampling for assessing toxicokinetics in main study animals, and acknowledges the overall important contribution of microsampling to the 3Rs benefits (replacement, reduction, and refinement), by reducing or eliminating the need for toxicokinetic satellite animals.

The Q&A guidance is intended to apply to the majority of pharmaceuticals and biopharmaceuticals; however, for all types of molecules, consideration should be given on a case-by-case basis as to whether the sensitivity of the measurement method is appropriate for the small sample volumes available. The guidance on microsampling provided in the Q&A can be used in any type of toxicology study, as well as in rodents and nonrodents.

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 "S3A Guidance: Note for Guidance on Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies: Focus on Microsampling—Questions and Answers." 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 document at <https://www.regulations.gov>, <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

Dated: May 4, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-09930 Filed 5-9-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-D-1562]

Uncomplicated Urinary Tract Infections: Developing Drugs for Treatment; Draft 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 draft guidance for industry entitled "Uncomplicated Urinary Tract Infections: Developing Drugs for Treatment." The purpose of this draft guidance is to assist sponsors in the development of new drugs for the treatment of uncomplicated urinary tract infections.

DATES: Submit either electronic or written comments on the draft guidance by August 8, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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-2018-D-1562 for "Uncomplicated Urinary Tract Infections: Developing Drugs for Treatment; Draft 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 draft 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Joseph Toerner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6244, Silver Spring, MD 20993-0002, 301-796-1400.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Uncomplicated Urinary Tract Infections: Developing Drugs for

Treatment.” The purpose of this draft guidance is to assist sponsors in the development of new drugs for the treatment of uncomplicated urinary tract infections.

This draft guidance defines enrollment criteria for uncomplicated urinary tract infection trials and provides options for clinical trials designed to demonstrate efficacy. An appendix to this draft guidance describes the justification for the noninferiority margin to be used for the option of active-controlled trials designed to demonstrate noninferiority. In addition, this draft guidance reflects recent developments in scientific information that pertain to drugs being developed for the treatment of uncomplicated urinary tract infections.

Issuance of this draft guidance fulfills a portion of the requirements of Title VIII, section 804, of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), which requires FDA to review and, as appropriate, revise not fewer than three guidance documents per year for the conduct of clinical trials with respect to antibacterial and antifungal drugs. In 1998, FDA published a draft guidance entitled “Uncomplicated Urinary Tract Infections—Developing Antimicrobial Drugs for Treatment” (the 1998 draft guidance). In a **Federal Register** notice dated August 7, 2013 (78 FR 48175), FDA announced an initiative in the Center for Drug Evaluation and Research involving the review of draft guidance documents issued before 2010 to determine their status and to decide whether those guidances should be withdrawn, revised, or finalized with only minor changes. In the same August 7, 2013, **Federal Register** notice, FDA announced that the 1998 draft guidance, as well as other draft guidances, was being withdrawn (78 FR 48175). FDA is now issuing a new draft guidance that revises the recommendations in the 1998 draft guidance.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on developing drugs for the treatment of uncomplicated urinary tract infections. 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. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <https://www.regulations.gov>.

Dated: May 4, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–09929 Filed 5–9–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, 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 of the National Vaccine Advisory Committee (NVAC). The meeting will be open to the public via teleconference; a public comment session will be held during the meeting.

DATES: The meeting will be held on June 25, 2018, from 2:00 p.m. to 4:30 p.m. EST. The confirmed meeting times and agenda will be posted on the NVAC website at <http://www.hhs.gov/nvpo/nvac/meetings/index.html> as soon as they become available.

ADDRESSES: Instructions regarding attending this meeting will be posted one week prior to the meeting at: <http://www.hhs.gov/nvpo/nvac/meetings/index.html>. Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or participate in the public comment session should register

at <http://www.hhs.gov/nvpo/nvac/meetings/index.html>.

FOR FURTHER INFORMATION CONTACT:

Captain Angela Shen, National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715H, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Phone: (202) 690–5566; email: nvac@hhs.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of HHS was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program’s responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The public meeting will include a presentation from the HPV Implementation Working Group on its findings and draft recommendations for strengthening the effectiveness of national, state, and local efforts to improve HPV coverage rates. The presentation will be followed by Committee deliberation and a vote. The public meeting will also include a presentation on the recent HHS report, “Encouraging Vaccine Innovation: Promoting the Development of Vaccines that Minimize the Burden of Infectious Diseases in the 21st Century,” which was submitted to Congress in accordance with provisions in the 21st Century Cures Act. All agenda items are tentative and subject to change. Information on the final meeting agenda will be posted prior to the meeting on the NVAC website: <http://www.hhs.gov/nvpo/nvac/index.html>.

Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods designated on the agenda. 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 email their comments to the National Vaccine Program Office (nvac@hhs.gov) at least five business days prior to the meeting.

Dated: May 7, 2018.

Roula Sweis,

Deputy Director, National Vaccine Program Office.

[FR Doc. 2018-09947 Filed 5-9-18; 8:45 am]

BILLING CODE 4150-44-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that

Intertek USA, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of June 13, 2017.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on June 13, 2017. The next triennial inspection date will be scheduled for June 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 149 Pintail St., St. Rose, LA 70087, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the

provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
11	Volume Correction Factors.
12	Calculations.
17	Maritime Measurements.

Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-03	ASTM D-4006	Standard test method for water in crude oil by distillation.
27-04	ASTM D-95	Standard test method for water in petroleum products and bituminous materials by distillation.
27-05	ASTM D-4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	ASTM D-473	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27-08	ASTM D-86	Standard Test Method for Distillation of Petroleum Products.
27-11	ASTM D-445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27-13	ASTM D-4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-14	ASTM D-2622	Standard Test Method for Sulfur in Petroleum Products (X-Ray Spectrographic Methods).
27-46	ASTM D-5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27-48	ASTM D-4052	Standard test method for density and relative density of liquids by digital density meter.
27-50	ASTM D-93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27-54	ASTM D-1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27-58	ASTM D-5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: May 2, 2018.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018-10020 Filed 5-9-18; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Ferndale, WA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (Ferndale, WA) as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Ferndale, WA) has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 24, 2017.

DATES: AmSpec LLC (Ferndale, WA) was approved and accredited as a commercial gauger and laboratory as of August 24, 2017. The next triennial inspection date will be scheduled for August 2020.

FOR FURTHER INFORMATION CONTACT: Christopher J. Mocella, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 1350 Slater Rd., Unit 9, Ferndale, WA 98248, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. AmSpec LLC is approved for the following

gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime measurement.

AmSpec LLC is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-02	D1298.	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27-05	D4928.	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-13	D4294.	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-48	D4052.	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

Dated: April 30, 2018.

Dave Fluty,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2018-10022 Filed 5-9-18; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of May 19, 2016.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on May 19, 2016. The next triennial inspection date will be scheduled for May 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 15602 Jacintoport Blvd., Houston, TX 77015, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurement.
17	Maritime Measurements.

SGS North America, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-11	ASTM D-445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27-48	ASTM D-4052	Standard test method for density and relative density of liquids by digital density meter.
27-50	ASTM D-93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
N/A	ASTM D-92	Standard Test Method for Flash and Fire Points by Cleveland Open Cup Tester.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: May 2, 2018.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018-10021 Filed 5-9-18; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2018-0018]

The President's National Infrastructure Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee management; notice of an open federal advisory committee meeting.

SUMMARY: The President's National Infrastructure Advisory Council (NIAC) will meet Thursday, June 14, 2018, in Washington, DC. This meeting will be open to the public.

DATES: The NIAC will meet on Thursday, June 14, 2018, 1:00 p.m.-5:00 p.m. Eastern Standard Time (EST). The meeting may close early if the committee has completed its business. For additional information, please consult the NIAC website, www.dhs.gov/NIAC, or contact the NIAC Secretariat by phone at (703) 235-2888 or by email at NIAC@hq.dhs.gov.

ADDRESSES: 1331 F Street NW, Suite 800, Washington, DC 20004. Members of the public will register at the registration table prior to entering the meeting room. For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

Members of the public are invited to provide comments on issues to be considered by the NIAC mentioned in the **SUPPLEMENTARY INFORMATION** section. Comments must be submitted in writing no later than 12:00 p.m. on June 7, 2018, in order to be considered by the Council in its meeting. The comments must be identified by docket number DHS-2018-0018, and may be submitted by any one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting written comments.
- **Email:** NIAC@hq.dhs.gov. Include docket number DHS-2018-0018 in the subject line of the message.
- **Fax:** (703) 235-9707, ATTN: Ginger Norris.

• **Mail:** Ginger Norris, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane SW, Mail Stop 0612, Washington, DC 20598-0607.

Instructions: All written submissions must include the words "Department of Homeland Security" and docket number DHS-2018-0018. Written comments will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket or to read background documents or comments received by the NIAC, go to www.regulations.gov. Enter "NIAC" in the search line and the website will list all relevant documents for your review.

Members of the public will have an opportunity to provide oral comments on the topics on the meeting agenda below, and on any previous studies issued by the NIAC. We request that comments be limited to the issues and studies listed in the meeting agenda and previous NIAC studies. All previous NIAC studies can be located at www.dhs.gov/NIAC. Public comments may be submitted in writing or presented in person for the Council to consider. Comments for discussion during the NIAC meeting can be received on or after Thursday, June 7, 2018, no later than one hour prior to the start of the meeting. Comments received after the deadline will be added as part of the subsequent meeting minutes. In-person presentations will be limited to three minutes per speaker, with no more than 15 minutes for all speakers. Parties interested in making in-person comments should register on the Public Comment Registration list available at the entrance to the meeting location prior to the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Ginger Norris, NIAC Designated Federal Officer, Department of Homeland

Security, 202-441-5885, ginger.norris@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The NIAC shall provide the President, through the Secretary of Homeland Security, with advice on the security and resilience of the Nation's critical infrastructure sectors. The NIAC will meet to discuss issues relevant to critical infrastructure security and resilience, as directed by the President. The Council will discuss future taskings and host a cross-sector panel discussion about various risks facing critical infrastructure. All powerpoint presentations will be posted prior to the meeting on the Council's public web page; www.dhs.gov/NIAC.

Agenda

- I. Opening of Meeting
- II. Roll Call of Members
- III. Opening Remarks and Introductions
- IV. Approval of November 2017 Meeting Minutes
- V. Long Duration Power Outage Scoping Study
- VI. Public Comment
- VII. Discussion of New NIAC Business
- VIII. Closing Remarks
- IX. Adjournment

Deirdre Gallop-Anderson,

Alternate Designated Federal Officer for the National Infrastructure Advisory Council.

[FR Doc. 2018-09946 Filed 5-9-18; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Revision From OMB of One Current Public Collection of Information: TSA Claims Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0039, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of information from claimants in order to thoroughly examine and resolve tort claims against the agency.

DATES: Send your comments by July 9, 2018.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

- (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

OMB Control Number 1652-0039; TSA Claims Application, previously named the TSA Claims Management Branch Program, allows the agency to collect information from claimants in order to thoroughly examine and resolve tort claims against the agency. TSA is revising the collection by changing the name from "TSA Claims Management Branch Program" to "TSA Claims Application." TSA receives approximately 850 tort claims per

month arising from airport screening activities and other circumstances, including motor vehicle accidents and employee loss. The Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), 2401(b), 2671-2680) is the authority under which the TSA Claims, Outreach and Debt Branch adjudicates tort claims.

The data is collected whenever an individual believes s/he has experienced property loss or damage, a personal injury, or other damages due to the negligence or wrongful act or omission of a TSA employee, and decides to file a Federal tort claim against TSA. Submission of a claim is entirely voluntary and initiated by individuals. The claimants (or respondents) to this collection are typically the traveling public. Currently, claimants file a claim by submitting to TSA a Standard Form 95 (SF-95), which has been approved under OMB control number 1105-0008. Because TSA requires further clarifying information, claimants are asked to complete a Supplemental Information page added to the SF-95. If TSA determines payment is warranted, TSA will send the claimant a form requesting banking information (routing and accounting numbers) in order to direct payment to the claimant. This form has been approved under OMB control number 1652-0039.

Claim instructions and forms are available through the TSA website at <http://www.tsa.gov>. Claimants must download these forms and mail or fax them to TSA. On the Supplemental Information page, claimants are asked to provide additional claim information including: (1) Email address, (2) airport, (3) location of incident within the airport, (4) complete travel itinerary, (5) whether baggage was delayed by the airline, (6) why they believe TSA was negligent, (7) whether they used a third-party baggage service, (8) whether they were traveling under military orders, and (9) whether they submitted claims with the airline or insurance companies.

If TSA determines payment is warranted, TSA sends the claimant a form requesting: (1) Claimant signature, (2) banking information, and (3) Social Security number (required by the U.S. Treasury for all Government payments to the public pursuant to 31 U.S.C. 3325).

Under the current system of claims submitted by mail or fax, TSA estimates there will be approximately 10,200 respondents on an annual basis, for a total annual hour burden of 5,300 hours.

Dated: May 2, 2018.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2018-09925 Filed 5-9-18; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6104-N-01]

Announcement of the Housing Counseling Federal Advisory Committee Notice of Public Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Housing Counseling Federal Advisory Committee (HCFAC) Public Meeting.

SUMMARY: This gives notice of a Housing Counseling Federal Advisory Committee (HCFAC) meeting and sets forth the proposed agenda. The Committee meeting will be held on Tuesday, May 22, 2018. The meeting is open to the public and is accessible to individuals with disabilities. This notice is being published less than 15 days prior to the meeting date due to unforeseen administrative delays.

DATES: The meeting via teleconference will be held on May 22, 2018, starting at 11 a.m. Eastern Standard Time (ET) via conference phone.

FOR FURTHER INFORMATION CONTACT: Virginia F. Holman, Housing Specialist, Office of Housing Counseling, U.S. Department of Housing and Urban Development, 600 East Broad Street, Richmond, VA 23219; telephone number (804) 822-4911 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877-8339 (toll-free number). Individuals may also email HCFACCommittee@hud.gov.

SUPPLEMENTARY INFORMATION: HUD is convening the meeting of the HCFAC on Tuesday May 22, 2018 from 11 a.m. to 2 p.m. ET. The meeting will be held and via conference phone. This meeting notice is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2).

Draft Agenda—Housing Counseling Federal Advisory Committee Meeting—May 22, 2018

I. Welcome.

II. Advisory Committee—Review of recommendations.

- III. OHC—Update on Committee Recommendations.
- IV. Administrative Issues—Recognition of Retiring Members.
- V. Public Comment.
- VI. Adjourn.

Registration

The teleconference meeting is open to the public, with limited phone lines available, on a first-come, first-served basis. Advance registration is required to participate. To register to attend, please visit the following link: <https://pavr.wufoo.com/forms/hcfac-meeting-registration-05222018/>. After completing the pre-registration process at the above link, participants will receive a conference code via email.

Attendees can call-in to the meeting by using the following number in the United States: (888) 297-9852 (toll-free number). Participants are required to enter a conference code, which will be sent to all registered attendees via email.

An operator will ask callers to provide their names and their organizational affiliations (if applicable) prior to placing callers into the conference line to ensure they are part of the pre-registration list. Callers can expect to incur charges for calls they initiate over wireless lines and HUD will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number. Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS): (800) 977-8339 (toll-free number) and providing the FRS operator with the conference call number: (888) 297-9852.

Comments

With advance registration, members of the public will have an opportunity to provide oral and written comments relative to agenda topics for the Committee's consideration. To provide oral comments, please be sure to indicate this on the registration link. The total amount of time for oral comments will be 15 minutes with each commenter limited to two minutes to ensure pertinent Committee business is completed. Written comments must be provided no later than May 15, 2018 at 5 p.m. ET to HCFACCommittee@hud.gov. Please note, written statements submitted will not be read during the meeting. The Committee will not respond to individual written or oral statements; but, it will take all public comments into account in its deliberations.

Meeting Records

Records and documents discussed during the meeting, as well as other

information about the work of this Committee, will be available for public viewing as they become available at: <http://www.facadatabase.gov/committee/committee.aspx?cid=2492&aid=77> by clicking on the "Committee Meetings" link. Information on the Committee is also available on HUD Exchange at <https://www.hudexchange.info/programs/housing-counseling/federal-advisory-committee/>.

Dated: May 4, 2018.

Dana Wade,

General Deputy Assistant, Secretary for Housing.

[FR Doc. 2018-09993 Filed 5-7-18; 4:15 pm]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G]

Land Acquisitions; the Muscogee (Creek) Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Principal Deputy Assistant Secretary—Indian Affairs made a final agency determination to acquire 48.58 acres, more or less, of land near the City of Eufaula, McIntosh County, Oklahoma, (Fountainhead Site) in trust for the Muscogee (Creek) Nation for gaming and other purposes on April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS-3657 MIB, 1849 C Street NW, Washington, DC 20240, telephone (202) 219-4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On April 30, 2018, the Principal Deputy Assistant Secretary—Indian Affairs issued a decision to accept the Fountainhead Site, consisting of approximately 48.58 acres, more or less, of land in trust of the Muscogee (Creek) Nation (Nation), under the authority of the Indian Reorganization Act, 25 U.S.C. 5108. The Principal Deputy Assistant

Secretary—Indian Affairs determined that Nation's request also meets the requirements of the Indian Gaming Regulatory Act's "Oklahoma Exception," 25 U.S.C. 2719(a)(2)(A)(i), to the general prohibition contained in 25 U.S.C. 2719(a) on gaming on lands acquired in trust after October 17, 1988.

The Principal Deputy Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Fountainhead Site in the name of the United States of America in trust for the Nation upon fulfillment of Departmental requirements.

The property known as Fountainhead Resort property submitted for gaming-related purposes is comprised of 48.58 acres, located in Section 34, Township 11 North, Range 16 East, McIntosh County, Oklahoma, described as follows:

Beginning 165.00 feet west of the southeast corner of the Southwest Quarter (SW/4) of said Section Thirty-Four (34); THENCE north 00°18'24" East a distance of 330.00 feet; THENCE north 26°47'33" east a distance of 369.96 feet; THENCE north 00°18'24" east a distance of 134.27 feet; THENCE north 46°48'06" west a distance of 18.21 feet; THENCE north 59°50'42" west a distance of 150.63 feet; THENCE north 67°23'20" west a distance of 182.12 feet; THENCE north 57°54'16" west a distance of 507.87 feet; THENCE north 12°52'25" west a distance of 140.35 feet; THENCE north 33°20'21" east a distance of 160.30 feet; THENCE north 16°20'06" east a distance of 507.62 feet; THENCE south 89°56'04" west a distance of 444.33 feet; THENCE south 00°16'36" west a distance of 165.09 feet; THENCE south 22°01'53" west a distance of 891.23 feet; THENCE south 89°55'24" west a distance of 330.52 feet; THENCE south 26°49'23" west a distance of 370.00 feet; THENCE south 00°15'06" west 330.26 feet; THENCE south 26°23'58" east a distance of 368.42 feet to the South Line of said Section 34; THENCE north 89°54'44" east 1487.60 feet to the point of beginning.

Dated: April 30, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2018-09919 Filed 5-9-18; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X.LLID957000.L14400000.BJO000.241A.X.4500104880]

Filing of Plats of Survey: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Bureau of Land Management, Idaho State Office, Boise, Idaho, in 30 days from the date of this publication.

Boise Meridian, Idaho

T. 5 S., R. 17 E, Section 26, accepted April 18, 2018.

ADDRESSES: A copy of the plat may be obtained from the Public Room at the Bureau of Land Management, Idaho State Office, 1387 S Vinnell Way, Boise, Idaho 83709, upon required payment.

FOR FURTHER INFORMATION CONTACT:

Timothy A. Quincy, (208) 373-3981 Branch of Cadastral Survey, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709-1657. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Quincy. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest one or more plats of survey identified above must file a written notice with the Chief Cadastral Surveyor for Idaho, Bureau of Land Management. The protest must identify the plat(s) of survey that the person or party wishes to protest and contain all reasons and evidence in support of the protest. The protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any protest filed after the scheduled date of official filing will be untimely and will not be considered. A protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Idaho during regular business hours; if received after regular business hours, a protest will be considered filed the next business day. If a protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a protest, you should be aware that the documents you submit, including your personal identifying information, may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Timothy A. Quincy,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2018-10013 Filed 5-9-18; 8:45 am]

BILLING CODE 4310-AK-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-PWRO-TUSK-23857; PPPWTUSK00, PPMPSPD1Z.YM0000]

Notice of Public Meeting: Tule Springs Fossil Beds National Monument Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service is hereby giving notice of a meeting of the Tule Springs Fossil Beds National Monument Advisory Council.

DATES: The public meeting will be held on Monday, June 4, 2018, at 6:00 p.m. (Pacific).

ADDRESSES: The meeting will take place at the Federal Interagency Office Building, 4701 N. Torrey Pines Road, Las Vegas, Nevada 89130-2301.

FOR FURTHER INFORMATION CONTACT:

Further information concerning the meeting may be obtained from Diane Keith, Superintendent, Tule Springs Fossil Beds National Monument, 601 Nevada Way, Boulder City, Nevada 89005, via telephone at (702) 515-5462, or email at tusk_information@nps.gov.

SUPPLEMENTARY INFORMATION: The Council was established pursuant to Section 3092(a)(6) of Public Law 113-291 and in accordance with the provisions of the Federal Advisory Management Act (5 U.S.C. Appendix 1-16). The purpose of the Council is to advise the Secretary of the Interior, or his designee, with respect to the preparation and implementation of the management plan.

The tentative agenda for the meeting is as follows:

1. Introduction of Designated Federal Officer (DFO) and Council Members
2. Request for Public Comments
3. Committee Roll
4. Approval of Agenda
5. Review and Approval of Minutes
6. Reports
 - a. Superintendent Report
 - b. Old Business
 - c. New Business
7. Public Comments Submitted
8. Adjourn

The meeting is open to the public. Interested persons may make oral/

written presentations to the Council during the business meeting or file written statements. Such requests should be made to the Superintendent prior to the meeting. 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.

Authority: Section 3092(a)(6) of Public Law 113-291; 5 U.S.C. Appendix 1-16.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2018-09950 Filed 5-9-18; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2017-0063]

Outer Continental Shelf, Alaska OCS Region, Beaufort Sea, Proposed Oil and Gas Lease Sale for 2019

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Call for information and nominations, reopening of comment period.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) issued a Call for Information and Nominations (Call) in the **Federal Register** on March 30, 2018, covering a proposed sale in the Beaufort Sea Planning Area in late 2019, as included in the 2019-2024 National Outer Continental Shelf (OCS) Oil and Gas Leasing Draft Proposed Program, which BOEM announced on January 4, 2018. That notice had a comment period deadline of April 30, 2018. Several stakeholders have contacted BOEM and requested additional time to submit a comment. BOEM is reopening the comment period.

DATES: All nominations and comments submitted in response to this Call and extension must be received by BOEM no later than 11:59 p.m. Eastern Time on May 30, 2018. BOEM will consider submissions sent by mail as long as they are postmarked by the last day of the comment period.

ADDRESSES: *Public Comment Submission Procedures:* All public comments should be submitted through one of the following methods:

1. *Federal eRulemaking Portal*: <http://www.regulations.gov>. In the field entitled, "Search," enter "BOEM-2017-0063" and then click "search." Follow the instructions to submit public comments and view supporting and related materials available for this notice;

2. *U.S. Postal Service or other delivery service to the following address*: Chief, Leasing Section, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503-5823. Send your comments in an envelope clearly labeled, "Comments on the Call for Information and Nominations for Proposed 2019 Lease Sale in the Beaufort Sea Planning Area."

Nominations/Indications of Industry Interest Submission Procedures: To ensure security and confidentiality of proprietary information to the maximum extent possible, please send nominations/indications of interest and other proprietary information to Chief, Leasing Section, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503-5823. Send your nominations in an envelope clearly labeled, "Nominations for Proposed 2019 Lease Sale in the Beaufort Sea Planning Area."

FOR FURTHER INFORMATION CONTACT: Ms. Patricia LaFramboise, Chief, Leasing Section, Bureau of Ocean Energy Management, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, AK 99503, telephone (907) 334-5200.

SUPPLEMENTARY INFORMATION: The purpose of the Call published on March 30, 2018, (83 FR 13778) was to solicit industry nominations for areas of leasing interest and to gather comments and information on the area included in the Call for consideration in planning for this proposed OCS oil and gas lease sale. Because this lease sale is proposed to occur in 2019, and given the long lead time needed to prepare for a proposed sale, the planning process must begin now or the option of a lease sale in 2019 would be precluded. However, the Call is not a decision to lease and is not a prejudgment by the Secretary concerning any area that may be made available for leasing under the 2019-2024 National OCS Program. Please refer to the original **Federal Register** notice for additional information related to the Call for Information and Nominations.

1. Authority

This Call is published pursuant to the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1331-

1356), and the implementing regulation at 30 CFR 556.301.

2. Protection of Privileged or Proprietary Information

BOEM will protect privileged or proprietary information that industry submits in accordance with the Freedom of Information Act (FOIA) and OCSLA requirements. To avoid inadvertent release of such information, all documents and every page containing such information should be marked with the statement, "Confidential—Contains Proprietary Information." To the extent a document contains a mix of proprietary and nonproprietary information, the document should be clearly marked to indicate which portion of the document is proprietary and which is not. Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. The OCSLA states that the "Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this subchapter, established by regulation, or agreed to by the parties" (43 U.S.C. 1344(g)). BOEM considers nominations of specific blocks to be proprietary, and therefore BOEM will not release information that identifies any particular nomination with any particular party, so as not to compromise the competitive position of any participants in the process of indicating interest.

However, please be aware that BOEM's practice is to make all comments, including the names and addresses of individuals, available for public inspection. Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. In order for BOEM to withhold from disclosure your personal identifying information, you must identify any information contained in the submission of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence(s) of the disclosure of information, such as embarrassment, injury or other harm. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. BOEM will make available for public inspection, in their entirety, all comments submitted

by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

Dated: May 7, 2018.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2018-10012 Filed 5-9-18; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Full-Capture Arrow Rests and Components Thereof*, DN 3314; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and 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 United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (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 has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice

and Procedure filed on behalf of Bear Archery, Inc. on May 4, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain full-capture arrow rests and components thereof. The complaint names as respondents: 2BULBS Technology Co., Ltd. of China; Ningbo Linkboy Outdoor Sports Co., Ltd. of China; Shenzhen Keepmyway Tech. Co., Ltd. of China; Zhengzhou IRQ Outdoor Sports Co., Ltd. of China; Wenqing Zhang of China; Tingting Ye of China; Tao Li of China; and Sean Yuan of China. The complainant requests that the Commission issue a general exclusion order, or in the alternative, a limited exclusion order upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3314) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures).¹ Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 4, 2018.

Jessica Mullan,

Attorney Advisor.

[FR Doc. 2018-09922 Filed 5-9-18; 8:45 am]

BILLING CODE 7020-02-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Computer and Information Science and Engineering (CISE) (1115).

Date and Time: June 7, 2018: 12:30 p.m. to 5:30 p.m., June 8, 2018: 8:30 a.m. to 12:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room C2020, Alexandria, VA 22314.

Type of Meeting: Open.

Contact Person: Brenda Williams, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703-292-8900.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees and working groups to carry out needed studies and tasks.

Agenda

- NSF and CISE updates
- Discussion on NSF Big Ideas
- Discussion on CISE's center-scale investments
- Discussion on cloud computing and CISE research and education
- Broadening Participation in Computing update

Dated: May 7, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018-09961 Filed 5-9-18; 8:45 am]

BILLING CODE 7555-01-P

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Cyberinfrastructure (25150).

Date and Time: June 6, 2018, 10:00 a.m.–6:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Virtual Meeting Only, registration available at: https://www.nsf.gov/events/event_summ.jsp?cntn_id=245384&org=OAC.

Type of Meeting: Open.

Contact Person: Alejandro Suarez or Cynthia Jackson, CISE, Office of Advanced Cyberinfrastructure, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8970. Please contact for virtual meeting access information.

Minutes: May be obtained from the contact persons listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities in the OAC community. To provide advice to the Director/NSF on issues related to long-range planning.

Agenda: Updates on NSF wide OAC activities.

Dated: May 7, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–09962 Filed 5–9–18; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83174; File No. SR–NYSEArca–2018–15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E

May 4, 2018.

On March 6, 2018, NYSE Arca, Inc. (“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 continued listing and trading shares of the PGIM Ultra Short Bond ETF, a series of PGIM ETF Trust, under NYSE Arca Rule 8.600–E. The proposed rule change was published for comment in the **Federal Register** on March 23, 2018.³ On April 25, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act ⁵ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 7, 2018. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁶ designates June 21, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2018–15), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–09923 Filed 5–9–18; 8:45 am]

BILLING CODE 8011–01–P

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 82899 (Mar. 19, 2018), 83 FR 12824 (Mar. 23, 2018).

⁴ Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nysearca-2018-15/nysearca201815-3510337-162292.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ *Id.*

⁷ 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83177; File No. SR–MSRB–2018–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change, Consisting of Amendments to Rule G–21, on Advertising, Proposed New Rule G–40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G–42, on Duties of Non-Solicitor Municipal Advisors

May 7, 2018.

I. Introduction

On January 24, 2018, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “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 consisting of amendments to MSRB Rule G–21, on advertising (“proposed amended Rule G–21”), proposed new MSRB Rule G–40, on advertising by municipal advisors (“proposed Rule G–40”), and a technical amendment to MSRB Rule G–42, on duties of non-solicitor municipal advisors (“proposed amended Rule G–42,” together with proposed amended Rule G–21 and proposed Rule G–40, the “proposed rule change”). The proposed rule change was published for comment in the **Federal Register** on February 7, 2018.³

The Commission received four comment letters on the proposed rule change.⁴ On March 16, 2018, the MSRB granted an extension of time for the Commission to act on the filing until May 7, 2018. On April 30, 2018, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 82616 (February 1, 2018) (the “Notice of Filing”), 83 FR 5474 (February 7, 2017).

⁴ See Letter to Secretary, Commission, from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), dated February 28, 2018 (the “SIFMA Letter”); Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors (“NAMA”), dated February 28, 2018 (the “NAMA Letter”); Letter to Secretary, Commission, from Michael Nicholas, Chief Executive Officer, Bond Dealers of America (“BDA”), dated February 28, 2018 (the “BDA Letter”); Letter to Secretary, Commission, from Catherine Humphrey-Bennett, Municipal Advisory Compliance Officer, PFM Financial Advisors LLC and PFM Asset Management LLC (collectively, “PFM”), dated February 28, 2018 (the “PFM Letter”). Staff from the Office of Municipal Securities discussed the proposed rule change with representatives from BDA on April 10, 2018.

¹ 15 U.S.C. 78s(b)(1).

MSRB responded to the comment letters.⁵ This order approves the proposed rule change.

II. Description of Proposed Rule Change

As described more fully in the Notice of Filing, the MSRB stated that the purpose of proposed amended Rule G–21 is to, among other things: enhance the MSRB’s fair-dealing provisions by promoting regulatory consistency among Rule G–21 and the advertising rules of other financial regulators; and promote regulatory consistency between Rule G–21(a)(ii), the definition of “form letter,” and the Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 2210’s definition of “correspondence.”⁶ Proposed amended Rule G–21 also would make a technical amendment in paragraph (e), which the MSRB stated would streamline the rule.⁷

The MSRB stated that concurrent with its efforts to enhance Rule G–21 and promote regulatory consistency among Rule G–21 and the advertising rules of other financial regulators through proposed amended Rule G–21, it prepared proposed Rule G–40 to address advertising by municipal advisors.⁸ The MSRB added that, similar to proposed amended Rule G–21, proposed Rule G–40 would: provide general provisions that define the terms “advertisement” and “form letter,” and would set forth the general standards and content standards for advertisements; provide the definition of professional advertisements, and would define the standard for those advertisements; and would require the approval by a principal, in writing, before the first use of an advertisement.⁹ Also, proposed Rule G–40, similar to proposed amended Rule G–21, would apply to all advertisements by a municipal advisor, as defined in proposed Rule G–40(a)(i).¹⁰ However, the MSRB noted, unlike proposed amended Rule G–21, proposed Rule G–40 would contain certain substituted terms that are more relevant to municipal advisors, and proposed Rule G–40 would omit the three provisions in Rule G–21 that concern product advertisements (*i.e.*, product advertisements, new issue product advertisements, and municipal

fund securities product advertisements).¹¹

The proposed rule change also would make technical and non-substantive amendments to Rule G–42. Specifically, Rule G–42(f)(iv) defines municipal advisory activities as “those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iv) of this rule.”¹² The proposed rule change would provide a technical amendment to Rule G–42(f)(iv) to correct the cross-reference. Proposed amended Rule G–42 would replace the reference to subsection (f)(iv) in Rule G–42(f)(iv) with the intended reference to subsection (f)(iii). Rule G–42(f)(iii) defines the term “municipal advisor” for purposes of Rule G–42.¹³

The MSRB requested that the proposed rule change be effective nine months from the date of Commission approval.¹⁴

A. Proposed Amended Rule G–21

The MSRB stated that to enhance Rule G–21’s fair dealing requirements, as well as to promote regulatory consistency among Rule G–21 and the advertising rules of other financial regulators, proposed amended Rule G–21 would provide more specific content standards than current Rule G–21.¹⁵ The MSRB also stated that proposed amended Rule G–21 also would include revisions to the rule’s general standards for advertisements.¹⁶

a. Content Standards of Proposed Amended Rule G–21

In the Notice of Filing, the MSRB stated that proposed amended Rule G–21(a)(iii) would add content standards to make explicit many of the MSRB’s fair dealing obligations that follow from the MSRB’s requirements set forth in Rule G–21 and Rule G–17, on conduct of municipal securities and municipal advisory activities, and the interpretive guidance the MSRB has provided under those rules, and to specifically address them to advertising.¹⁷ The MSRB stated that the proposed rule change would not supplant the MSRB’s regulatory guidance provided under Rule G–17.¹⁸ The MSRB also stated that proposed amended Rule G–21 would enhance Rule G–21’s fair dealing provisions by requiring that:

- An advertisement be based on principles of fair dealing and good faith, be fair and balanced and provide a sound basis for evaluating the facts about any particular municipal security or type of municipal security, industry, or service, and that a dealer not omit any material fact or qualification if such omission, in light of the context presented, would cause the advertisement to be misleading;

- an advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim;

- a dealer limit the types of information placed in a legend or footnote of an advertisement so as to not inhibit a customer’s or potential customer’s understanding of the advertisement;

- an advertisement provide statements that are clear and not misleading within the context that they are made, that the advertisement provide a balanced treatment of the benefits and risks, and that the advertisement is consistent with the risks inherent to the investment;

- a dealer consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience;

- an advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; and

- an advertisement not include a testimonial unless it satisfies certain conditions.¹⁹

The MSRB stated that, by so doing, proposed amended Rule G–21(a)(iii) would promote regulatory consistency with FINRA Rule 2210(d)(1)’s and FINRA Rule 2210(d)(6)’s content standards for advertisements.²⁰ The MSRB stated that the other topics and standards addressed by other provisions of FINRA Rule 2210(d) have not been historically addressed by Rule G–21 and/or may not be relevant to the municipal securities market, and the MSRB did not include those topics in the MSRB’s request for comment on draft amendments to Rule G–21.²¹

Proposed amended Rule G–21 also would expand upon the guidance provided by Rule A–12, on registration. Rule A–12(e) permits a dealer to state that it is MSRB registered in its advertising, including on its website.²²

⁵ See Letter to Secretary, Commission, from Pamela K. Ellis, Associate General Counsel, MSRB, dated April 30, 2018 (the “Response Letter”), available at <https://www.sec.gov/comments/sr-msrb-2018-01/msrb201801-3551215-162309.pdf>.

⁶ See Notice of Filing.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Proposed amended Rule G–21(a)(iii)(H) would continue to permit a dealer to state that it is MSRB registered.²³ However, the MSRB noted that proposed amended Rule G–21(a)(iii)(H) would provide that a dealer shall only state in an advertisement that it is MSRB registered as long as, among other things, the advertisement complies with the applicable standards of all other MSRB rules and neither states nor implies that the MSRB endorses, indemnifies, or guarantees the dealer's business practices, selling methods, the type of security offered, or the security offered.²⁴ The MSRB stated that, by so doing, the proposed rule change would promote regulatory consistency with FINRA Rule 2210(e)'s analogous limitations on the use of FINRA's name and any other corporate name owned by FINRA.²⁵

b. General Standards of Proposed Rule G–21

The MSRB stated that proposed amended Rule G–21(a)(iv), (b)(ii), and (c)(ii) would promote regulatory consistency among Rule G–21's general standard for advertisements, standard for professional advertisements, and standard for product advertisements (collectively, the "general standards") and the content standards of FINRA Rule 2210(d). Currently, the MSRB stated, Rule G–21's general standards prohibit a dealer, in part, from publishing or disseminating material that is "materially false or misleading."²⁶ Proposed amended Rule G–21 would replace the phrase "materially false or misleading" with "any untrue statement of material fact" as well as add "or is otherwise false or misleading." The MSRB stated that it believes that this harmonization with FINRA Rule 2210(d) would be consistent with Rule G–21's current general standards and would ensure consistent regulation between similar regulated entities.²⁷

c. Reconcile MSRB Rule G–21 Definition of "Form Letter" With FINRA Rule 2210 Definition of "Correspondence"

Currently, the MSRB stated, Rule G–21(a)(ii) defines a "form letter," in part, as a written letter distributed to 25 or more persons.²⁸ The MSRB stated that the analogous provision in FINRA's communications with the public rule to

Rule G–21(a)(ii) is FINRA Rule 2210's definition of correspondence.²⁹ The MSRB noted that FINRA Rule 2210(a)(2)'s definition of correspondence, however, defines "correspondence," in part, as written communications distributed to 25 or fewer retail investors.³⁰ The MSRB stated that it understands that the one-person difference between Rule G–21 and FINRA Rule 2210 has created confusion and compliance challenges for dealers.³¹ The MSRB stated that, to respond to this concern, proposed amended Rule G–21(a)(ii) would eliminate that one-person difference, and, therefore, under proposed amended Rule G–21, a form letter, in part, would be defined as a written letter distributed to more than 25 persons.³²

Supplementary Material .03 to proposed amended Rule G–21 would explain the term "person" when used in the context of a form letter under Rule G–21(a)(ii).³³ Specifically, the MSRB noted, Supplementary Material .03 would explain that the number of "persons" is determined for the purposes of a response to a request for proposal ("RFP"), request for qualifications ("RFQ") or similar request at the entity level.³⁴

d. Technical Amendment to Rule G–21

In the Notice of Filing, the MSRB stated that proposed amended Rule G–21 would contain a technical amendment to Rule G–21(e).³⁵ The MSRB also stated that, to streamline and clarify the MSRB's rules, the proposed rule change would delete references to the Financial Industry Regulatory Authority, Inc. in Rule G–21(e)(ii)(F) and Rule G–21(e)(vi) because, for example, reference to any applicable regulatory body is sufficient and no limitation to any more narrow subset is intended.³⁶

B. Proposed Rule G–40

The MSRB stated that proposed Rule G–40, similar to Rule G–21, would set forth general provisions, address professional advertisements and require principal approval in writing for advertisements by municipal advisors before their first use.³⁷ However, the MSRB noted that proposed Rule G–40 would not address product

advertisements, as that term is defined in Rule G–21.³⁸ The MSRB also noted that proposed Rule G–40(a) would define the terms advertisement, form letter and municipal advisory client, and would provide content and general standards for advertisements by a non-solicitor or a solicitor municipal advisor.³⁹

a. Definitions

According to the MSRB, the term "advertisement" in proposed Rule G–40(a)(i) would parallel the term "advertisement" in proposed amended Rule G–21(a)(i), but would be tailored for municipal advisors.⁴⁰ The MSRB stated that an advertisement would refer, in part, to any promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients, or the public by a municipal advisor.⁴¹ Further, the MSRB stated that an advertisement would include the promotional literature used by a solicitor municipal advisor to solicit a municipal entity or obligated person on behalf of the solicitor municipal advisor's municipal advisory client.⁴²

In addition, the MSRB stated that, similar to proposed amended Rule G–21(a)(i), proposed Rule G–40(a)(i) would exclude certain types of documents from the definition of advertisement.⁴³ Under proposed Rule G–40, the documents that would be excluded would be preliminary official statements, official statements, preliminary prospectuses, prospectuses, summary prospectuses or registration statements.⁴⁴ According to the MSRB, these exclusions recognize the differences between the role of a dealer under Rule G–21 and the role of a solicitor municipal advisor under proposed Rule G–40.⁴⁵ The MSRB also stated that, as with Rule G–21, an abstract or summary of those documents or other such similar documents prepared by the municipal advisor would be considered an advertisement.⁴⁶ As an example, the MSRB stated that a municipal advisor may assist with the preparation of an official statement.⁴⁷ The MSRB also stated that an official statement would be excluded from the definition of an

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

advertisement.⁴⁸ According to the MSRB, under proposed Rule G–40(a)(i), the municipal advisor that assists with the preparation of an official statement generally would not be assisting with an advertisement and the municipal advisor's work on the official statement generally would not be subject to the requirements of proposed Rule G–40.⁴⁹

The term “form letter” in proposed Rule G–40 would be identical to the definition of that term set forth in proposed amended Rule G–21(a)(ii).⁵⁰ A form letter would be defined as any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.⁵¹

Proposed Rule G–40, similar to proposed amended Rule G–21, would include Supplementary Material .01 to clarify the number of “persons” for a response to an RFP, RFQ or similar request, when used in the context of a form letter under proposed Rule G–40(a)(ii), is determined at the entity level.⁵²

Proposed Rule G–40(a)(iii), unlike Rule G–21, includes the definition of the term “municipal advisory client.”⁵³ The MSRB stated that the definition of municipal advisory client would be substantially similar in all material respects to the definition of that term as set forth in the recent amendments to Rule G–8, effective October 13, 2017, to address municipal advisory client complaint recordkeeping.⁵⁴ The MSRB stated that the definition of municipal advisory client would account for differences in the activities of non-solicitor and solicitor municipal advisors.⁵⁵

b. Proposed Rule G–40—Content Standards

The MSRB stated that proposed Rule G–40(a)(iv) sets forth content standards for advertisements.⁵⁶ According to the MSRB, those content standards would be substantially similar in all material respects to the content standards set forth in proposed amended Rule G–21.⁵⁷ The MSRB noted that proposed Rule G–40 would replace certain terms used in proposed amended Rule G–21 with terms more applicable to municipal advisors.⁵⁸ The MSRB stated that it

believes that incorporating content standards for advertisements into proposed Rule G–40 would ensure consistent regulation between regulated entities in the municipal securities market, as well as promote regulatory consistency between dealer municipal advisors and non-dealer municipal advisors.⁵⁹

As further described by the MSRB in the Notice of Filing, proposed Rule G–40 would require that:

- An advertisement be based on the principles of fair dealing and good faith, be fair and balanced and provide a sound basis for evaluating the municipal security or type of municipal security, municipal financial product, industry, or service and that a municipal advisor not omit any material fact or qualification if such omission, in light of the context presented, would cause the advertisement to be misleading;

- an advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim;

- a municipal advisor limit the types of information placed in a legend or footnote of an advertisement so as to not inhibit a municipal advisory client's or potential municipal advisory client's understanding of the advertisement;

- an advertisement provide statements that are clear and not misleading within the context that they are made, that the advertisement provides a balanced treatment of risks and potential benefits, and that the advertisement is consistent with the risks inherent to the municipal financial product or the issuance of the municipal security;

- a municipal advisor consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience;

- an advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; and

- an advertisement not refer, directly or indirectly, to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service of the municipal advisor.⁶⁰

The MSRB also stated in the Notice of filing that, by so doing, proposed Rule G–40's content generally would promote

regulatory consistency with proposed amended Rule G–21.⁶¹

However, unlike proposed amended Rule G–21, proposed Rule G–40 would prohibit a municipal advisor from using a testimonial in an advertisement.⁶² The MSRB stated that this prohibition is based in part on the fiduciary duty that a non-solicitor municipal advisor (as opposed to a dealer) owes its municipal entity clients.⁶³ The MSRB noted that investment advisers also are subject to fiduciary duty standards.⁶⁴

The MSRB stated that it believes that a testimonial in an advertisement by a municipal advisor would present significant issues, including the ability to be misleading.⁶⁵ The MSRB noted that in adopting Rule 206(4)–1 under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), the rule that applies to advertisements by registered investment advisers, the SEC found that the use of testimonials in advertisements by an investment adviser was misleading.⁶⁶ The MSRB stated that Rule 206(4)–1 provides that the use of a testimonial by an investment adviser would constitute a fraudulent, deceptive, or manipulative act, practice, or course of action.⁶⁷ The MSRB stated that it believes prohibiting the use of testimonials by municipal advisors under proposed Rule G–40 would protect municipal entities and obligated persons, help ensure consistent regulation between analogous regulated entities, and help ensure a level playing field between municipal advisors/investment advisers and other municipal advisors.⁶⁸

The MSRB stated that, apart from the content standards discussed above, proposed Rule G–40(a)(iv)(H), similar to proposed amended Rule G–21(a)(iii)(H), also would expand upon the guidance provided by Rule A–12, on registration.⁶⁹ Rule A–12(e) permits a municipal advisor to state that it is MSRB registered in its advertising, including on its website. Proposed Rule G–40(a)(iv)(H) would continue to permit a municipal advisor to state that it is MSRB registered, but it would also provide that a municipal advisor shall only state in an advertisement that it is MSRB registered as long as, among other things, the advertisement complies with the applicable standards of all other MSRB rules and neither states nor

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

implies that the MSRB endorses, indemnifies, or guarantees the municipal advisor's business practices, services, skills, or any specific municipal security or municipal financial product.⁷⁰

c. Proposed Rule G-40—General Standard for Advertisements

In the Notice of Filing, the MSRB stated that proposed Rule G-40(a)(v) would set forth a general standard with which a municipal advisor must comply for advertisements.⁷¹ The MSRB stated that that standard would require, in part, that a municipal advisor not publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities or municipal financial products that the municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.⁷² The MSRB believes that the knowledge standard as the general standard for advertisements is appropriate.⁷³ According to the MSRB, proposed Rule G-40 is similar to proposed amended Rule G-21(a)(iv) in all material respects, except proposed Rule G-40 substitutes "municipal advisor" for the term "dealer" and, consistent with Section 15B(e)(4) of the Act, applies with regard to municipal financial products in addition to municipal securities.⁷⁴

d. Proposed Rule G-40—Professional Advertisements

Proposed Rule G-40(b) would define the term "professional advertisement," and would provide the standard for such advertisements. As defined in proposed Rule G-40(b)(i), a professional advertisement would be an advertisement "concerning the facilities, services or skills with respect to the municipal advisory activities of the municipal advisor or of another municipal advisor." Proposed Rule G-40(b)(ii) would provide, in part, that a municipal advisor shall not publish or disseminate any professional advertisement that contains any untrue statement of material fact or is otherwise false or misleading.

In the Notice of Filing, the MSRB stated that the strict liability standard for professional advertisements in proposed Rule G-40(b)(ii) is consistent with the MSRB's long-standing belief that a regulated entity should be strictly liable for an advertisement about its

facilities, skills, or services, and that a knowledge standard is not appropriate.⁷⁵ The MSRB also stated that it has held this belief since it developed its advertising rules for dealers over 40 years ago. According to the MSRB, proposed Rule G-40(b) would be substantially similar in all material respects to proposed amended Rule G-21(b).⁷⁶

e. Proposed Rule G-40—Principal Approval

Proposed Rule G-40(c) would require that each advertisement that is subject to proposed Rule G-40 be approved in writing by a municipal advisor principal—as defined under MSRB Rule G-3(e)(i)—before its first use. Proposed Rule G-40(c) also would require that the municipal advisor keep a record of all such advertisements. The MSRB stated that proposed Rule G-40(c) is similar in all material respects to proposed amended Rule G-21(f).⁷⁷ The MSRB also stated that if the SEC approves the proposed rule change, municipal advisors should update their supervisory and compliance procedures required by Rule G-44, on supervisory and compliance obligations of municipal advisors, to address compliance with proposed Rule G-40(c).⁷⁸

f. Proposed Rule G-40—Product Advertisements

Proposed Rule G-40 would omit the provisions set forth in Rule G-21 regarding product advertisements, new issue product advertisements, and municipal fund security product advertisements. The MSRB stated that it understands, at this juncture, that municipal advisors most likely do not prepare such advertisements, as municipal advisors generally advertise their municipal advisory services and not products.⁷⁹

III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received four comment letters in response to the Notice of Filing. The MSRB responded to the comment letters on the Notice of Filing in its Response Letter.⁸⁰

A. Comments Received Regarding Proposed Amended Rule G-21

In response to the Notice of Filing, two commenters primarily addressed

proposed Rule G-21.⁸¹ Specifically, these commenters focused on (i) proposed amended Rule G-21's consistency with FINRA Rule 2210, (ii) the provision of additional exclusions from the definition of an "advertisement," (iii) the allowance of hypothetical illustrations in advertisements, (iv) the provision of jurisdictional guidance under Rule G-21 relating to dealer/municipal advisors, and (v) the economic analysis the MSRB provided regarding proposed amended Rule G-21.⁸² Both commenters recommended that the Commission disapprove the proposed rule change.⁸³

a. Request for Additional Amendments to Proposed Amended Rule G-21 To Promote Consistency With FINRA Rule 2210

Commenters supported proposed amended Rule G-21's promotion of regulatory consistency with FINRA Rule 2210, but believed that the amendments should be further harmonized with FINRA Rule 2210 by adopting that rule's (i) definition of "communications" and the distinctions in FINRA Rule 2210 that follow from that definition⁸⁴ and (ii) provisions on the use of testimonials,⁸⁵ or by incorporating FINRA Rule 2210 by reference into Rule G-21.⁸⁶ Further, to promote regulatory consistency among proposed amended Rule G-21 and proposed Rule G-40 and FINRA Rule 2210, commenters suggested that the definitions and product advertisement and professional advertisement sections could be deleted from proposed amended Rule G-21 and proposed Rule G-40.⁸⁷

i. Proposed Amended Rule G-21 Definition of "Communication"

BDA and SIFMA suggested that the MSRB go beyond the MSRB's stated purpose of the proposed amendments, *i.e.*, to promote, in part, regulatory consistency among proposed amended Rule G-21 and the advertising rules of other financial regulators. Instead, BDA and SIFMA suggested that the MSRB "harmonize" Rule G-21 with FINRA Rule 2210 by adopting FINRA Rule 2210's definition of "communications" and the distinctions in the rule that follow from that definition. BDA stated that "[i]n order for harmonization of MSRB rules with FINRA rules to be successful, MSRB must follow this general framework for MSRB Rule G-

⁸¹ See BDA Letter and SIFMA Letter.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See BDA Letter.

⁸⁷ See BDA Letter and SIFMA Letter.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See Response Letter.

21.” Further, SIFMA commented that the “MSRB has not justified the need for differences from the FINRA advertising rule.” In particular, commenters favored the harmonization with FINRA Rule 2210’s communications definition because institutional communications would no longer be subject to pre-approval by a principal. BDA and SIFMA submitted that, if the MSRB were to do so, dealers then could apply common approval processes for institutional communications across all asset classes. Alternatively, SIFMA suggested that, to provide even greater clarity, the MSRB revise proposed amended Rule G–21(a)(i) and proposed Rule G–40(a)(i) to add the term “otherwise” before the phrase “made generally available to municipal entities, obligated persons, municipal advisory clients or the public . . .”⁸⁸ BDA stated that principal pre-approval of advertisements imposes “completely unnecessary burdens on dealers” and that “[i]f MSRB has a rule that applies different definitions and different sets of responsibilities to municipal securities and does not differentiate between communications sent to retail and institutional customers, it will have created a new and unnecessarily increased regulatory burden along with considerable confusion for broker-dealers.”⁸⁹

In response, the MSRB stated that it believes that BDA’s and SIFMA’s comments fail to recognize the statutory principles set forth in the Act that underlie the differences between FINRA’s communications rule and the MSRB’s advertising rule.⁹⁰ To explain the differences between the MSRB’s advertising rule and FINRA’s communication rule, the MSRB provided a description of the statutory authority granted by the Act to the MSRB and FINRA to promulgate rules to regulate its registrants and members, respectively, and provided a recitation of differences between the corporate and municipal securities market that, the MSRB stated, necessitate differences between FINRA’s communication rule and the MSRB’s advertising rules.⁹¹ The MSRB noted that, unlike FINRA members, MSRB registrants are not “members” of the MSRB.⁹² Rather, the MSRB stated, a dealer or municipal advisor becomes subject to MSRB rules based on the dealer’s or municipal advisor’s activities; those activities may require the dealer or municipal advisor

to register with the SEC and the MSRB.⁹³ The MSRB further stated that the corporate securities markets and municipal securities markets are different—if only because, unlike with a corporate bond, interest on a municipal security may not be subject to federal income tax.⁹⁴

The MSRB also stated that because the Act limits the MSRB’s jurisdiction to the municipal securities market, the MSRB’s rulemaking authority also is limited, in part, to dealers effecting transactions in municipal securities and advice provided to or on behalf of municipal entities by such dealers, and by municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by dealers and municipal advisors.⁹⁵ The MSRB also noted that, similar to FINRA’s rules, the MSRB’s rules are designed to protect investors and the public interest.⁹⁶ However, the MSRB noted that, unlike FINRA’s rules, Section 15B of the Act requires that the MSRB’s rules also be designed to protect municipal entities and obligated persons.⁹⁷ The MSRB further stated that Section 15B of the Act does not provide the MSRB with the authority to enforce its own rules.⁹⁸ Rather, the MSRB noted, the MSRB’s rules are enforced by other financial regulators, including FINRA and the SEC.⁹⁹

The MSRB stated that, in furtherance of the intent of Congress that the MSRB develop a prophylactic framework of regulation for the municipal securities industry, the MSRB developed its fair practice rules, including its advertising rules, to codify basic standards of fair and ethical business conduct for municipal securities professionals.¹⁰⁰ The MSRB stated that its advertising rules serve an important function to help prevent fraud from entering the marketplace and to protect investors, particularly retail investors, consistent with the MSRB’s mission to protect municipal securities investors.¹⁰¹ The MSRB further stated that, since 1978, when the MSRB first adopted its advertising rules, the MSRB has based its advertising regulation on the MSRB’s fair practice principles and the important supervisory function of principal pre-approval along with

liability provisions and document retention requirements to regulate advertisements by dealers.¹⁰² By so doing, the MSRB stated, the MSRB’s regulatory regime in general relied on the firm and its policies and procedures related to the supervision of an advertisement, with the degree of liability for the advertisement based on advertisement type.¹⁰³ The MSRB added that, consistent with the MSRB’s reliance on other financial regulators to enforce MSRB rules, a dealer neither files any of its advertisements with, nor receives a substantive review of any of those advertisements, by the MSRB.¹⁰⁴ Rather, according to the MSRB, the dealer must retain records relating to the advertisement, and those records must be available for inspection by other financial regulators.¹⁰⁵ Thus, the MSRB stated, MSRB’s advertising regulations in general draw a sharp distinction from FINRA Rule 2210.¹⁰⁶

In response to BDA’s comment that having different definitions and different sets of responsibilities imposed by proposed amended Rule G–21 and FINRA Rule 2210 would result in “new and unnecessarily increased regulatory burden along with considerable confusion for broker-dealers. . . .”, the MSRB stated that the requirements in proposed amended Rule G–21, however, are not newly proposed and that they have been, and continue to be, core principles on which the MSRB’s advertising regulation is based.¹⁰⁷ The MSRB added that Rule G–21 currently requires that a municipal securities principal or general securities principal approve each advertisement in writing prior to first use.¹⁰⁸ The MSRB stated that it continues to believe that it is an important supervisory function to have a principal pre-approve an advertisement regardless of the intended recipient of the advertisement along with the liability provisions associated with the advertisement type.¹⁰⁹ The MSRB also stated that supervisory pre-approval, as opposed to submission of an advertisement and substantive review of an advertisement by MSRB staff, serves as an important investor protection in what has been recognized as a municipal bond market that “embraces a multi-faceted, complex array of state and local public debt.”¹¹⁰

⁸⁸ See SIFMA Letter.

⁸⁹ See BDA Letter.

⁹⁰ See Response Letter.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

The MSRB stated that it has determined not to depart from the longstanding principles on which the MSRB has based its advertising regulations.¹¹¹

ii. Use of Testimonials Under Proposed Amended Rule G–21

BDA urged the MSRB to permit testimonials in dealer advertising to better harmonize Rule G–21 with FINRA Rule 2210.¹¹² BDA stated that to do otherwise would result in confusion and an inconsistent “patchwork” approach to make portions of FINRA rules applicable to dealers under MSRB rules.¹¹³ The MSRB stated that proposed amended Rule G–21, in fact, would permit dealer advertisements to contain testimonials under the same conditions as are currently set forth in FINRA Rule 2210(d)(6).¹¹⁴

iii. Incorporation of FINRA Rule 2210 by Reference Into Proposed Amended Rule G–21

SIFMA commented that, while it supported the MSRB’s efforts to level the playing field between dealers and municipal advisors, the better way to level that playing field, as well as to promote harmonization with FINRA’s rules, is for the MSRB to incorporate FINRA Rule 2210 by reference into the MSRB’s rules.¹¹⁵ Nevertheless, SIFMA did not propose that the MSRB incorporate FINRA Rule 2210 in its entirety by reference into Rule G–21.¹¹⁶ Rather, SIFMA submitted that certain provisions of FINRA Rule 2210(c) relating to the filing of advertisements with FINRA and the review procedures for those advertisements were unnecessary and burdensome and should not be included.¹¹⁷ Further, SIFMA recognized that there may be a need for certain MSRB regulation of dealer and municipal advisor advertising.¹¹⁸ SIFMA stated that “[w]ith respect to advertising or public communications for most municipal securities products (except for municipal advisory business and municipal fund securities), we feel there is no compelling reason to establish a different rule set than that which exists under FINRA Rule 2210.”¹¹⁹

The MSRB responded to SIFMA’s comments by stating that the differences between FINRA’s and the MSRB’s statutory mandates account for certain

of the differences between FINRA’s communications rules and the MSRB’s advertising rule, and that commenters’ suggestions fail to recognize the importance of those differences.¹²⁰ The MSRB stated that FINRA’s communications rules regulate the activities of its members in the broader corporate securities markets, where the securities “are relatively homogenous within major categories.”¹²¹ Further, the MSRB stated, FINRA enforces its own rules.¹²² By contrast, the MSRB stated, the MSRB’s statutory mandate is limited to the regulation of dealers and municipal advisors in the municipal securities market, a market that embraces a multi-faceted, complex array of state and local public debt as well as municipal fund securities, such as interests in 529 savings plans.¹²³ Moreover, the MSRB reiterated that it does not enforce its rules; other financial regulators enforce MSRB rules.¹²⁴

The MSRB further noted that, as it had previously discussed in the Notice of Filing, Rule G–21 is one of the MSRB’s core fair practice rules that has been in effect since 1978.¹²⁵ In proposing those rules, the MSRB stated the purpose of the fair practice rules is to codify basic standards of fair and ethical business conduct for municipal securities professionals.¹²⁶ The MSRB stated that it has based its advertising rules on the MSRB’s fair practice principles and the important supervisory function of principal pre-approval along with liability provisions to regulate advertisements by dealers.¹²⁷ The MSRB stated that it believes that it would not fully meet its responsibilities under the Act to promote a fair and efficient municipal market with appropriately tailored regulation if it were to simply incorporate an advertising rule designed for other markets, as suggested by SIFMA, particularly when advertising regulation has been the subject of a long-standing MSRB fair practice rule to help prevent fraud from entering the municipal securities market.¹²⁸

Further, the MSRB noted that if the MSRB were to incorporate FINRA Rule 2210 by reference, and if FINRA or its staff were to provide an interpretation of FINRA Rule 2210, the MSRB could appear to be adopting that interpretation

without considering the interpretation’s ramifications for the special characteristics of the municipal securities market. The MSRB stated that, consistent with its statutory mandate, FINRA adopts rules for the broader corporate securities markets that include the corporate equity and debt markets.¹²⁹ The MSRB further stated that FINRA’s rules are not tailored to the unique regulatory needs of the municipal securities market.¹³⁰ The MSRB stated that, at a minimum, if it were to incorporate FINRA Rule 2210 by reference, the MSRB would have to consider the ramifications of any future interpretations of FINRA Rule 2210 for the municipal securities market.¹³¹

In addition, the MSRB stated that there are municipal securities dealers that are not members of FINRA; those municipal securities dealers should not necessarily be expected to keep abreast of FINRA rule interpretations.¹³² The MSRB stated that after carefully considering SIFMA’s suggestions, including the recognition of the important differences between the municipal securities market and the corporate securities market, the MSRB determined not to incorporate FINRA Rule 2210 by reference into Rule G–21.¹³³

iv. Definition of Standards for Product and Professional Advertisements

BDA commented that the definitions of standards for product advertisements and professional advertisements were “made redundant by the inclusion of the proposed general and content standards of proposed G–21 and G–40[,]” and that “these provisions should be deleted to signify that these types of communications are covered by the general and content standards of the proposed rule.”¹³⁴

In response, the MSRB stated that although the provisions in proposed amended Rule G–21 and proposed Rule G–40 are analogous to the current provisions in Rule G–21, there are differences in those provisions.¹³⁵ For example, the MSRB noted, Rule G–21(b) contains a strict liability standard relating to the publication or dissemination of professional advertisements.¹³⁶ The MSRB stated that since it first proposed Rule G–21, the MSRB has believed that “a strict standard of responsibility for securities

¹¹¹ *Id.*

¹¹² *See* BDA Letter.

¹¹³ *Id.*

¹¹⁴ *See* Response Letter.

¹¹⁵ *See* SIFMA Letter.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *See* Response Letter.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *See* Response Letter and Notice of Filing.

¹²⁷ *See* Response Letter.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *See* BDA Letter.

¹³⁵ *See* Response Letter.

¹³⁶ *Id.*

professionals [is necessary] to assure that their advertisements are accurate.”¹³⁷ The MSRB stated that it has based its advertising regulation on the MSRB’s long-standing fair practice principles and the important supervisory function of principal pre-approval along with liability and document retention provisions to regulate advertisements by dealers.¹³⁸ The MSRB stated that, after careful consideration, it determined at this time not to delete the standards for product and professional advertisements.¹³⁹

b. Potential Additional Exclusions From the Definition of “Advertisement”

Commenters suggested additional exclusions from the definition of an advertisement related to private placement memoranda¹⁴⁰ and responses to RFPs or RFQs.¹⁴¹

i. Private Placement Memoranda and Limited Offering Memoranda

BDA and SIFMA commented that, as part of its harmonization effort, the MSRB should exclude private placement memoranda and limited offering memoranda from the definition of advertisement in proposed amended Rule G–21.¹⁴² SIFMA suggested that such harmonization would be consistent with the exception from FINRA’s content standards found in FINRA Rule 2210(d)(9).¹⁴³ SIFMA also suggested that private placement memoranda and limited offering memoranda be excluded from the definition of an “advertisement” in proposed Rule G–40.¹⁴⁴ BDA noted that “private placement memoranda and limited offering memoranda are frequently used as offering memoranda and thus should be excluded alongside preliminary offering statements [from the definition of an “advertisement”].”¹⁴⁵

The MSRB stated that it understands BDA’s comment as follows: because private placement memoranda and limited offering memoranda are used as a preliminary offering statement would be used, a private placement memorandum and a limited offering memorandum should be excluded from the definition of an “advertisement” on the same basis that a preliminary offering statement is excluded from that definition.¹⁴⁶ The MSRB, however,

stated that after careful consideration it determined not to exclude private placement memoranda and limited offering memoranda from the definition of an advertisement.¹⁴⁷ The MSRB stated that the purpose of the proposed rule change, in part, was not to fully harmonize Rule G–21 with FINRA Rule 2210, as suggested by commenters.¹⁴⁸ Rather, the purpose of the proposed rule change, in part, was to promote regulatory consistency among the advertising rules of other financial regulators.¹⁴⁹ The MSRB also noted that FINRA Rule 2210 does not provide a similar exclusion.¹⁵⁰ The MSRB added that, for almost 40 years, it has limited the exclusions to the definition of an advertisement to issuer prepared documents that are widely disseminated.¹⁵¹ The MSRB stated that, similarly, FINRA Rule 2210 does not exclude a private placement memorandum from the definition of a “communication.”¹⁵² Rather, the MSRB stated, FINRA Rule 2210 provides limited exclusions from FINRA Rule 2210(c)’s filing requirements and from Rule 2210(d)’s content standards for prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the SEC or any state and similar offering documents concerning securities offerings that are exempt from SEC and state registration requirements and free writing prospectuses that are exempt from filing with the SEC.¹⁵³ The MSRB stated that the exclusions from FINRA Rule 2210 avoid regulatory duplication.¹⁵⁴ Moreover, the MSRB noted, SIFMA stated that dealers or municipal advisors may have played a role in preparing the private placement memoranda or limited offering memoranda.¹⁵⁵ The MSRB stated that FINRA clearly has stated that in such cases, FINRA Rule 2210 would apply to dealers.¹⁵⁶

The MSRB stated that it continues to believe that it can best fulfill its mission to protect investors, municipal entities, obligated persons, and the public interest by retaining the narrow exclusions from the definition of an advertisement that are currently set forth in Rule G–21 and that would be set forth in proposed Rule G–40.¹⁵⁷ In so

doing, the MSRB stated that it believes, consistent with its regulatory charge and mission, that it is best able to prevent potential fraud from entering the municipal securities market.¹⁵⁸ Thus, the MSRB stated that it has determined, consistent with FINRA Rule 2210, not to exclude those materials from the scope of proposed amended Rule G–21.¹⁵⁹

BDA also commented that, “[a]s part of its harmonization effort, the MSRB should exclude [from the scope of Rule G–21] materials that are comparable to offering materials that accompany preliminary official statements, such as investor roadshow presentations and other similar materials information [sic].”¹⁶⁰

In response, the MSRB stated that an investor road show may be a written offer that contains a presentation about an offering by one or more members of the issuer’s management and includes discussion of one or more of the issuer, such management and the securities being offered.¹⁶¹ The MSRB further stated that a written investor road show in general is a free writing prospectus that is not required to be filed with the SEC.¹⁶² The MSRB stated that it recognizes that an investor road show may be used in connection with a private placement, as well as to accompany a preliminary official statement provided to institutional investors, and, in some cases, the investor road show may be made available to retail investors in municipal securities.¹⁶³

ii. Response to an RFP or RFQ

BDA and SIFMA commented that the MSRB should amend Rule G–21 (BDA, SIFMA, and NAMA also made similar comments with respect to proposed Rule G–40) to exclude a response to an RFP or RFQ from the definition of an advertisement.¹⁶⁴ Commenters submitted that it was not appropriate for the MSRB to regulate responses to requests for proposals or qualifications the same way that the MSRB regulates “retail communications”—i.e., possibly requiring principal approval in writing before sending the response to the RFP or RFQ to an issuer.¹⁶⁵

The MSRB stated that it agrees, and provided supplementary material in the proposed rule change to provide clarification to proposed amended Rule

¹³⁷ See Response Letter and Notice of Filing.

¹³⁸ See Response Letter.

¹³⁹ *Id.*

¹⁴⁰ See BDA Letter and SIFMA Letter.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ See SIFMA Letter.

¹⁴⁴ *Id.*

¹⁴⁵ See BDA Letter.

¹⁴⁶ See Response Letter.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ See BDA Letter.

¹⁶¹ See Response Letter.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See BDA Letter and SIFMA Letter.

¹⁶⁵ *Id.*

G-21's definition of a "form letter".¹⁶⁶ The MSRB stated that it believes that a response to an RFP or RFQ would generally not be within the definition of an advertisement primarily because such responses would not meet the definition of a form letter in proposed amended Rule G-21(a)(ii) and proposed Rule G-40(a)(ii).¹⁶⁷ The MSRB stated that Supplementary Material .03 to proposed amended Rule G-21 and Supplementary Material .01 to proposed Rule G-40 explain that an entity that receives a response to an RFP, RFQ or similar request would count as one "person" for the purposes of the definition of a form letter no matter the number of employees of the entity who may review the response.¹⁶⁸ Further, the MSRB stated that the unilateral publication of a response to an RFP or RFQ or similar request by an issuer official would not make that response an advertisement.¹⁶⁹ The MSRB noted that, nevertheless, such responses are subject to MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities.¹⁷⁰ The MSRB added that, given the supplementary material contained in proposed amended Rule G-21 and proposed Rule G-40, the MSRB believes that no additional provisions are necessary at this time to address commenters' concerns.¹⁷¹

SIFMA requested guidance under proposed Rule G-40 about whether an email that only includes required regulatory disclosures that is sent to more than 25 municipal advisory clients through blind copies would constitute an advertisement.¹⁷² In response, the MSRB stated that such emails containing only required regulatory disclosures would not constitute advertisements under proposed Rule G-40.¹⁷³ The MSRB added that those emails would not be published or used in any electronic or other public media and would not constitute written or electronic promotional literature.¹⁷⁴ The MSRB also stated that if an email that contained a required regulatory disclosure also included material that was promotional in nature and sent to more than 25 persons within any period of 90 consecutive days, that email could constitute an advertisement and would be subject to proposed Rule G-40.¹⁷⁵

c. Hypothetical Illustrations

The Response Letter noted that FINRA had recently requested comment on draft amendments to FINRA Rule 2210 to create an exception to the rule's prohibition on projecting performance to permit a firm to distribute a customized hypothetical investment planning illustration that includes the projected performance of an investment strategy.¹⁷⁶ SIFMA commented that the MSRB should include a similar exception in the proposed rule change.¹⁷⁷ The MSRB noted that it had asked in its initial Request for Comment whether it should consider a similar proposal, in part to promote regulatory consistency among the advertising regulations of financial regulators.¹⁷⁸ The MSRB noted that the comment period on FINRA's draft amendments to FINRA Rule 2210 closed March 27, 2017, and FINRA has not yet announced any next rulemaking steps.¹⁷⁹ The MSRB determined that it would be premature to include provisions to address FINRA's draft amendments to Rule 2210 in the proposed rule change before FINRA determines how to proceed with those draft amendments and before the SEC has taken action with respect to the proposed rule change.¹⁸⁰ The MSRB also stated that such action currently would not promote regulatory consistency among the advertising regulations of financial regulators, but that it will continue to monitor the FINRA initiative.¹⁸¹

d. Dealer/Municipal Advisor Jurisdictional Guidance

SIFMA commented that the MSRB should provide guidance and/or exemptions from proposed amended Rule G-21 for dealer/municipal advisors.¹⁸² Specifically, SIFMA suggested that the MSRB amend Rule G-21 to clarify that the activities of dealer/municipal advisors are governed by proposed Rule G-40 when those dealer/municipal advisors are engaging in municipal advisor advertising.¹⁸³

In response, the MSRB stated that it believes, consistent with its statutory mandate, that a dealer or a municipal advisor only becomes subject to MSRB

rules based on its activities, and that the MSRB's advertising rules are based, in part, on the activities in which the dealers or municipal advisors engage.¹⁸⁴ The MSRB noted, for example, that if a dealer/municipal advisor publishes a print advertisement relating to the sale of municipal bonds, those activities would be subject to Rule G-21.¹⁸⁵ Similarly, the MSRB stated, if the dealer/municipal advisor prepares a professional advertisement about its municipal advisory services that it then circulates to municipal entities, that advertisement would be subject to proposed Rule G-40.¹⁸⁶ The MSRB agreed that as currently drafted, certain provisions of proposed amended Rule G-21 and proposed Rule G-40 are similar.¹⁸⁷ For example, the MSRB stated, as noted by commenters, the content standards of each rule are similar.¹⁸⁸ The MSRB stated that to the extent that there are differences between proposed amended Rule G-21 and proposed Rule G-40, those differences are based, in part, on the activities in which a dealer or municipal advisor engages.¹⁸⁹ Thus, the MSRB concluded that such jurisdictional guidance may not be needed at this time because of the similarities between proposed amended Rule G-21 and proposed Rule G-40.¹⁹⁰

Nevertheless, the MSRB stated that jurisdictional guidance relating to dealer/municipal advisors under Rule G-21 may be beneficial in the future, and the MSRB expects to begin to address such issues in its next fiscal year.¹⁹¹ The MSRB believes that its regulation of financial advisory activities (as an element of municipal securities activity) should remain in place at least until its advertising rule for municipal advisors is approved by the Commission and the professional qualification examinations for municipal advisors have been filed by the MSRB with the Commission.¹⁹² The MSRB also stated that it had recently approved the filing of the Municipal Advisor Principal Qualification Examination Content Outline (Series 54) to formally establish the Series 54 examination.¹⁹³ However, in recognition, in part, of the challenges faced by dealer/municipal advisors, the MSRB expects to begin to address such jurisdictional issues during its next

¹⁶⁶ See Response Letter.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² See SIFMA Letter.

¹⁷³ See Response Letter.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ See Response Letter and MSRB Notice 2017-04, Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors (Feb. 16, 2017) ("Request for Comment").

¹⁷⁷ See SIFMA Letter.

¹⁷⁸ See Response Letter and Request for Comment.

¹⁷⁹ See Response Letter.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² See SIFMA Letter.

¹⁸³ *Id.*

¹⁸⁴ See Response Letter.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

fiscal year.¹⁹⁴ Thus, after careful consideration of the commenter's suggestions, the MSRB¹⁹⁵ determined not to revise proposed amended Rule G-21 to reflect the commenter's request.

e. Economic Analysis of Proposed Amended Rule G-21

SIFMA commented that the advertising rules should be structured based on activity and not by registration.¹⁹⁶

In response, the MSRB stated that it does consider the nature and scope of dealer and municipal advisor activities when it develops rules, and that the proposed rule change, in fact, is based on respective activities of dealers and municipal advisors.¹⁹⁷ Additionally, the MSRB stated that although dealer/municipal advisors will be governed by both proposed amended Rule G-21 and proposed Rule G-40, dual-registrants should recognize that advertisements that are solely related to dealer activities would only be subject to proposed amended Rule G-21.¹⁹⁸ Likewise, the MSRB noted, advertisements that are solely related to municipal advisory activities would only be subject to proposed Rule G-40.¹⁹⁹ The MSRB also stated that because the baseline is current Rule G-21, the MSRB believes that at least some of the costs associated with dealer advertising compliance are already reflected in existing costs.²⁰⁰ The MSRB believes that many of the new or increased costs associated with proposed amended Rule G-21 would be up-front costs from initial compliance development such as updating or rewriting policies and procedures.²⁰¹ Finally, the MSRB stated that the proposed amended Rule G-21 will promote regulatory consistency with FINRA's rules that should, in fact, promote efficiency and be beneficial to regulated entities.²⁰²

B. Comments Received Regarding Proposed Rule G-40

Two comment letters primarily focused on proposed Rule G-40.²⁰³ These commenters focused on (i) the ability of the MSRB to regulate advertising by municipal advisors through other MSRB rules without proposed Rule G-40, (ii) suggested revisions to proposed Rule G-40's

content standards, (iii) the suggested adoption of the relief that SEC staff provided to investment advisers relating to testimonials in advertisements, (iv) principal pre-approval, (v) guidance relating to municipal advisor websites and the use of social media, and (vi) the economic analysis.²⁰⁴ One commenter agreed with many of the provisions of proposed new Rule G-40.²⁰⁵ The other commenter, although in agreement that municipal advisors should engage in advertisements based on the principles of fair dealing and good faith, recommended that the MSRB withdraw proposed Rule G-40.²⁰⁶

a. Ability To Regulate Municipal Advisor Advertising Through Other Rules

NAMA commented that proposed Rule G-40 is not necessary because the protections offered by Rule G-17 provide sufficient investor protection from misleading statements.²⁰⁷

In response, the MSRB stated that adopting the course of action suggested by NAMA not only would be inconsistent with the MSRB's statutory mandate, but also would create an un-level playing field in the municipal securities market.²⁰⁸ The MSRB stated that the United States Congress charged the MSRB with the responsibility to create a new regulatory regime for municipal advisors that, in part, requires the MSRB to protect municipal entities as well as obligated persons.²⁰⁹ The MSRB added that to fulfill those statutory responsibilities, the MSRB has tailored its developing municipal advisor regulatory regime, as appropriate, to reflect the differences in the roles and responsibilities of municipal advisors and dealers in the municipal securities market.²¹⁰ The MSRB stated that it has long recognized that the market for municipal advisory services is separate and distinct from the market for services of municipal securities brokers and dealers, and as such, it is appropriate and reasonable to tailor MSRB rules for municipal advisors.²¹¹

The MSRB stated that one of the ways that fraud may enter the market for municipal advisory services is through advertising.²¹² The MSRB added that, consistent with its statutory mandate, the MSRB designed proposed Rule G-40

to help prevent fraudulent and manipulative practices in the market for municipal advisory services, and tailored proposed Rule G-40 to reflect the types of advertisements that municipal advisors publish.²¹³ The MSRB stated that regulating advertising by municipal advisors through Rule G-17 would be inconsistent with the MSRB's statutory mandate to protect municipal entities and obligated persons.²¹⁴ According to the MSRB, Rule G-17 sets forth the MSRB's fair dealing principles; Rule G-17 does not provide particular guidance on how a municipal advisor should apply those principles to its advertisements.²¹⁵ By contrast, the MSRB noted, proposed Rule G-40 provides the detail needed to enable municipal advisors through specific conduct to better comply with those fair dealing principles as they relate to advertising.²¹⁶

Moreover, the MSRB believes that relying on Rule G-17 to regulate municipal advisor advertising would create an un-level playing field, and would be contrary to the recommendations of other market participants.²¹⁷ The MSRB stated that this un-level playing field would be between municipal advisors (subject to Rule G-17, but not Rule G-21) and dealers (subject to both Rules G-17 and G-21) and among municipal advisors that are not registered as dealers and municipal advisors that are also registered as dealers or investment advisers (subject to Rule G-21 and FINRA Rule 2210 or Rule 206(4)-1 under the Investment Advisers Act of 1940, as amended, (the "Advisers Act"), as relevant).²¹⁸ Further, the MSRB noted that other commenters believed that having a separate rule to address advertising by municipal advisors would be helpful as dealers and municipal advisors have different roles and responsibilities in the municipal securities market.²¹⁹ Therefore, after careful consideration, the MSRB determined to address advertising by municipal advisors through proposed Rule G-40.²²⁰

b. Definition of "Advertisement" Under Proposed Rule G-40

NAMA commented that the general information exclusions from the definition of "advice" under Rule 15Ba1-1(d)(1)(ii) under the Act that

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See SIFMA Letter.

¹⁹⁷ See Response Letter.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² See Response Letter.

²⁰³ See NAMA Letter and PFM Letter.

²⁰⁴ *Id.*

²⁰⁵ See PFM Letter.

²⁰⁶ See NAMA Letter.

²⁰⁷ *Id.*

²⁰⁸ See Response Letter.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

would permit a municipal advisor to not register with the SEC should equally apply as exclusions to the MSRB's municipal advisor advertising rule.²²¹

In response to NAMA's comment, the MSRB stated that the purpose of proposed Rule G-40, in part, is to ensure that municipal advisor advertising does not contain any untrue statement of material fact and is not otherwise false or misleading. The MSRB also stated that regardless of whether certain information rises to the level of advice, that information may be advertising used to market to potential municipal advisory clients.²²² The MSRB believes this type of information should be covered by proposed Rule G-40, as the MSRB is obligated to protect municipal entities under the Act.²²³ The MSRB reiterated that Congress mandated that the MSRB protect investors; municipal entities, including issuers of municipal securities; obligated persons; and the public interest.²²⁴ Thus, after considering commenters' suggestions, the MSRB determined not to include additional exceptions from the definition of an "advertisement" in proposed Rule G-40.²²⁵

c. Proposed Rule G-40's Content Standards

In the NAMA Letter, NAMA requested that the MSRB revise proposed Rule G-40 to provide more definitive content standards.²²⁶ In particular, NAMA stated that the content standards in proposed Rule G-40 should reflect a clearer separation between the content standards applicable to product advertisements and the content standards applicable to professional advertisements.²²⁷ NAMA suggested that this separation was important because the clear majority of municipal advisors only engage in professional services advertising.²²⁸ To that end, NAMA suggested that there should be separate content standards for product advertisements and for professional advertisements, that the liability provisions in proposed Rule G-40 should be reduced, and that the requirement that all advertisements be fair and balanced should be deleted.²²⁹

In response, the MSRB stated that it believes that such separate standards could needlessly increase the

complexity of proposed Rule G-40 without any offsetting benefit of enhancing the ability of a municipal advisor to comply with proposed Rule G-40. Moreover, the MSRB stated, NAMA's suggestions about the content standards for professional advertisements would lessen the strict liability provisions set forth in proposed Rule G-40(b)(ii) that would apply to professional advertisements.²³⁰

NAMA also suggested that the MSRB completely delete the MSRB's general standard for advertisements set forth in proposed Rule G-40(a)(v).²³¹ The general standard for advertisements requires, in part, that a municipal advisor shall not publish an advertisement relating to municipal securities or municipal financial products that the municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.²³² The MSRB stated that the liability provisions are important to the MSRB's advertising regulation, and since 1978, the MSRB has imposed strict liability with respect to professional advertisements.²³³ The MSRB also stated that it has resisted prior suggestions that the MSRB lessen that standard for professional advertisements.²³⁴ The MSRB continues to believe that (i) the liability provisions are key elements to its advertising regulation, (ii) the liability provisions in its advertising regulations should be consistent between dealers and municipal advisors, and (iii) the liability provisions in the MSRB's advertising regulations should not be lessened.

NAMA commented that the content standards of the proposed rule change were not clear, and suggested that proposed Rule G-40(a)(iv)(A) be deleted because it is repetitive of Rule G-17.²³⁵ The MSRB responded that proposed Rule G-40(a)(iv)(A) would require, in part, that an advertisement be fair and balanced, and those principles would apply to an advertisement of any service.²³⁶ The MSRB stated that it developed the content standards based, in part, on analogous advertising regulations of other financial regulators, primarily those of FINRA, as well as those of the SEC and the National Futures Association.²³⁷ The MSRB stated that similar content standards to those set forth in proposed Rule G-

40(a)(iv)(A) have long been understood by the financial entities subject to regulation by those financial regulators.²³⁸ In addition, the MSRB stated that reliance only on Rule G-17 to regulate municipal advisor advertising would result in municipal advisors not having the specificity needed based on their activities to enable municipal advisors to better comply with those principles.²³⁹ Nevertheless, the MSRB stated, if the SEC were to approve proposed Rule G-40, the MSRB would publish guidance about proposed Rule G-40's content standards before proposed Rule G-40 were to become effective.²⁴⁰ Thus, after careful consideration and for the reasons stated above, the MSRB determined not to revise proposed Rule G-40's content standards.²⁴¹

d. Use of Testimonials Under Proposed Rule G-40

NAMA, PFM, and SIFMA commented on proposed Rule G-40(iv)(G)'s prohibition on the use of testimonials in municipal advisor advertisements.²⁴² Their comments ranged from the view that testimonials should be excluded from proposed Rule G-40²⁴³ to the view that, while the prohibition on the use of testimonials may be warranted, the MSRB should provide guidance under proposed Rule G-40(iv)(G) relating to the use of client lists and case studies.²⁴⁴ Specifically, NAMA suggested that "if any version of Rule G-40 is ultimately adopted, then the current circumstances argue strongly in favor of the MSRB removing testimonials from Rule G-40 for now and, if necessary, consider any future amendment to deal with testimonials in a way that is consistent with FINRA's and the SEC's overall treatment."²⁴⁵ SIFMA suggested that proposed Rule G-40 be harmonized with FINRA Rule 2210(d)(6) which permits testimonials in advertisements by dealers, "subject to the content standards and requirements that apply."²⁴⁶ NAMA also commented that at a minimum, testimonials should "be treated the same under both Rules G-21 and G-40."²⁴⁷ NAMA and PFM commented that, if proposed Rule G-40 were to prohibit testimonials by municipal advisors, then the MSRB

²²¹ See NAMA Letter.

²²² See Response Letter.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ See NAMA Letter.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ See Response Letter.

²³¹ See NAMA Letter.

²³² See Response Letter.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ See NAMA Letter.

²³⁶ See Response Letter.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² See NAMA Letter, PFM Letter and SIFMA Letter.

²⁴³ See NAMA Letter.

²⁴⁴ See PFM Letter.

²⁴⁵ See NAMA Letter.

²⁴⁶ See SIFMA Letter.

²⁴⁷ See NAMA Letter.

should provide certain interpretive relief from that prohibition.²⁴⁸ NAMA suggested that the MSRB narrow that prohibition by adopting all the SEC staff's guidance that is applicable to investment advisers relating to testimonials.²⁴⁹ NAMA also commented that the definition of advertisement should "provide for client lists and case studies to be exempt from advertising consistent with the SEC's prior action and current investment adviser practices."²⁵⁰ PFM requested that the MSRB provide clarification relating to the use of client lists and case studies.²⁵¹

In response, the MSRB stated that it considered commenters' suggestions, and continues to believe that a testimonial presents significant issues, including the ability of the testimonial to be misleading.²⁵² The MSRB stated that dealers and municipal advisors have different types of relationships and roles with their customers or municipal advisory clients, respectively, and have different models for providing advice.²⁵³ The MSRB further stated that those differences are recognized in the Act, particularly with regard to the fiduciary duties owed by a municipal advisor to its municipal entity clients.²⁵⁴ Citing to the Act, the MSRB noted that dealers do not owe a similar fiduciary duty to their customers.²⁵⁵ The MSRB stated that, recognizing the fiduciary duty owed by municipal advisors to their municipal entity clients, the MSRB considered the regulations of other financial regulators where the regulated entity owes a fiduciary duty to its clients.²⁵⁶ Thus, the MSRB stated that it recognizes that other comparable financial regulations, such as Rule 206(4)–1 under the Advisers Act, prohibit advisers from including testimonials in advertisements and noted that investment advisers are subject to fiduciary standards.²⁵⁷ The MSRB also stated, as discussed in the Notice of Filing, that it is aware of the interpretive guidance provided by the SEC staff relating to testimonials.²⁵⁸

For the reasons set forth in the Notice of Filing and the Request for Comment, the MSRB determined not to revise proposed Rule G–40 to delete the

testimonial ban or to adopt all SEC staff guidance related to the testimonial ban under Rule 206(4)–1.²⁵⁹ The MSRB stated that if the SEC were to approve proposed Rule G–40, the MSRB would publish guidance about the use of municipal advisory client lists and case studies by municipal advisors before Rule G–40 were to become effective.²⁶⁰

e. Principal Pre-Approval Under Proposed Rule G–40

BDA commented that principal pre-approval was not needed or could be limited to certain types of advertisements.²⁶¹ BDA commented that clients of municipal advisors are institutions, and that as institutions, they do not need many of the "mechanistic protections applicable to dealer relationships with retail investors."²⁶² BDA commented that it "does not believe that a principal needs to approve every municipal advisor advertisement . . . [but that] the MSRB should allow either a municipal advisor principal or a general securities principal to approve advertisements, consistent with Rule G–21."²⁶³ Similarly, SIFMA commented that proposed Rule G–40(c) should allow for a general securities principal to approve advertisements consistent with Rule G–21.²⁶⁴

In response, the MSRB stated that an important element of the MSRB's statutory mandate is to protect municipal entities and obligated persons.²⁶⁵ The MSRB noted that the Congress determined that municipal entities do need protection under the federal securities laws, and charged the MSRB with developing a municipal advisor regulatory scheme to so do.²⁶⁶ Moreover, the MSRB stated, there is no general securities principal qualification applicable to municipal advisors.²⁶⁷ Therefore, the MSRB stated that it interprets BDA's and SIFMA's comments as suggesting that a general securities principal who may review dealer advertisements under Rule G–21 should also be able to review municipal advisor advertising under proposed Rule G–40.²⁶⁸ The MSRB responded that, in that case, it believes that it would be inconsistent with the MSRB's regulatory framework for municipal

advisors to have a general securities principal review municipal advisor advertising, as a general securities principal would not be qualified under Rule G–3, on professional qualification requirements, to do so.²⁶⁹ The MSRB stated that it believed qualification as a general securities principal under FINRA's Series 24 examination would not ensure that the general securities principal would be aware of the regulatory requirements applicable to municipal advisors as those requirements are not tested as part of that examination.²⁷⁰ Further, the MSRB noted that it believes it would be inconsistent with an important part of the MSRB's mission to protect state and local governments and other municipal entities to have a general securities principal, with little regulatory assurance of minimum knowledge of applicable MSRB rules, approve advertising by a municipal advisor.²⁷¹ Thus, the MSRB stated that it determined not to revise proposed Rule G–40 to permit a general securities principal to approve advertising by municipal advisors.²⁷²

f. Guidance Relating to Municipal Advisor Websites and the Use of Social Media

In the NAMA Letter, NAMA requested more specific guidance about the content posted on a municipal advisor's website and about the use of social media by a municipal advisor.²⁷³ Specifically, NAMA requested guidance about whether material posted on a municipal advisor's website would constitute an advertisement under proposed Rule G–40.²⁷⁴ Further, NAMA requested guidance on the use of social media.²⁷⁵

In response, the MSRB stated that the definition of advertisement under proposed Rule G–40 is broad, and similar to Rule G–21, would apply to any "material . . . published or used in any electronic or other public media" ²⁷⁶ Thus, the MSRB stated, because a website is electronic and public, any material posted on a municipal advisor's website would be an advertisement if that material comes within the definition of an advertisement.²⁷⁷ The MSRB added that simply publishing material on a website would not exclude material that

²⁴⁸ See NAMA Letter and PFM Letter.

²⁴⁹ See NAMA Letter.

²⁵⁰ *Id.*

²⁵¹ See PFM Letter.

²⁵² See Response Letter.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ See Response Letter and Notice of Filing.

²⁵⁸ *Id.*

²⁵⁹ See Response Letter, Request for Comment and Notice of Filing.

²⁶⁰ See Response Letter.

²⁶¹ See BDA Letter.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ See SIFMA Letter.

²⁶⁵ See Response Letter.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ See NAMA Letter.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ See Response Letter.

²⁷⁷ *Id.*

otherwise would qualify as an advertisement under proposed Rule G–40(a)(i).²⁷⁸ As such, the MSRB stated, proposed Rule G–40 would apply to any material posted on a municipal advisor's public website or more generally, on any website, if that material comes within the other terms of the definition of an advertisement as set forth in proposed Rule G–40(a)(i).²⁷⁹

In response to NAMA's request for additional interpretive guidance regarding the use social media by municipal advisors, the MSRB stated that it believes that such guidance would be timely after any SEC approval of an advertising rule for municipal advisors.²⁸⁰ The MSRB further stated that if the SEC were to approve proposed Rule G–40, such that the terms of a rule that will be going into effect are determined, the MSRB would publish social media guidance before the effective date of such rule.²⁸¹

g. Economic Analysis of Proposed Rule G–40

Several comments were received comments on the Economic Analysis that the MSRB performed on the proposed rule change from both NAMA and SIFMA.²⁸² NAMA suggested that the MSRB did not properly considered the aggregate burden that rulemaking has placed on municipal advisor firms.²⁸³ NAMA also commented that the MSRB did not appropriately consider the burden placed on small firms.²⁸⁴ SIFMA suggested that proposed Rule G–40 mirror proposed amended Rule G–21 to reduce costs for dual-registrants.²⁸⁵

As the MSRB noted in the Notice of Filing and the Response Letter, the MSRB stated that it is planning to conduct a retrospective analysis on the cumulative impact of the municipal advisor regulatory framework on the municipal advisory industry once the entire framework is implemented.²⁸⁶ The MSRB stated that such analysis is currently planned for 2019 when proposed Rule G–40 would become effective, if approved by the SEC.²⁸⁷ Thus, the MSRB stated, it does not believe that a formal analysis of the entire municipal advisor regulatory framework could commence prior to

2019.²⁸⁸ The MSRB stated that as a part of the municipal advisor regulatory framework retrospective analysis, the MSRB is also planning to specifically examine the frequency with which issuers use municipal advisors over time, pending availability of data.²⁸⁹ The MSRB stated that it believes the costs associated with the proposed rule change should not be unduly burdensome for small municipal advisory firms.²⁹⁰ The MSRB contended that for some one-time initial compliance costs, the MSRB believes that small municipal advisory firms may incur proportionally larger costs than larger firms.²⁹¹ However, the MSRB noted that for many other ongoing costs, such as costs associated with principal approval and recordkeeping requirements, as well as investments in advertisements previously developed but no longer compliant, the costs should be proportionate to the size of the firm, assuming that small firms generally advertise less than larger firms.²⁹² Thus, the MSRB stated that it believes it is unlikely that proposed Rule G–40 would have an outsized impact on small firms.²⁹³ The MSRB stated that it believes that proposed Rule G–40 and proposed amended Rule G–21 are already substantially similar; the main differences between the two rules are proposed Rule G–40's ban on testimonials and omission of three provisions that concern product advertisements.²⁹⁴ The MSRB noted that in developing the substantially similar provisions, the MSRB was sensitive to the burdens on dealer/municipal advisors and the efficiencies resulting from consistent provisions.²⁹⁵ The MSRB stated that the degree to which proposed Rule G–40 and proposed amended Rule G–21 mirror each other is a result of these considerations and that differences are attributable to aspects of municipal advisory activity that differs from broker-dealer activity, irrespective of whether the municipal advisor is a dealer or non-dealer municipal advisor.²⁹⁶

C. MSRB's General Response to Comments and Commitment To Provide Interpretive Guidance

In response to the comments received regarding the proposed rule change, the MSRB stated that it believes that the

proposed rule change will enhance the MSRB's fair practice rules for dealers by promoting regulatory consistency among Rule G–21 and the advertising rules of other financial regulators.²⁹⁷ Further, the MSRB stated that as the proposed rule change is a key element of the MSRB's development of its core regulatory framework for municipal advisors, the proposed rule change will enhance the MSRB's fair practice rules by, for the first time, providing rules about advertising by municipal advisors through proposed Rule G–40.²⁹⁸ Finally, the MSRB stated that, consistent with the MSRB's goal of providing tools to enhance the ability of dealers and municipal advisors to comply with MSRB rules, if the SEC were to approve the proposed rule change, the MSRB would provide the following guidance before proposed amended Rule G–21 and proposed Rule G–40 would become effective:²⁹⁹

- Guidance under proposed Rule G–40(a)(iv)(G) relating to case studies and client lists;³⁰⁰
- Guidance under proposed Rule G–40(c) relating to content standards;³⁰¹ and
- Guidance under proposed Rule G–40 relating to a municipal advisor's use of social media.³⁰²

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received and the Response Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed amended Rule G–21 and proposed Rule G–40, are consistent with Section 15B(b)(2)(C) of the Act.³⁰³ Section 15B(b)(2)(C) of the Act requires that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² See NAMA Letter and SIFMA Letter.

²⁸³ See NAMA Letter.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ See Response Letter and Notice of Filing.

²⁸⁷ *Id.*

²⁸⁸ See Response Letter.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ 15 U.S.C. 78o–4(b)(2)(C).

municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.³⁰⁴

The Commission believes that proposed amended Rule G–21 is consistent with the provisions of Section 15B(b)(2)(C)³⁰⁵ of the Act because it will help prevent fraudulent and manipulative practices by prohibiting dealers from making any false, exaggerated, unwarranted, promissory or misleading statement or claim in an advertisement. Proposed amended Rule G–21 requires that advertisements be based on the principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts. A dealer will not be able to omit any material fact or qualification, if the omission, in light of the context of the material presented, would cause the advertisement to be misleading. Further, the prescriptive nature of proposed amended Rule G–21 provides guidelines for dealers to follow that will help prevent fraudulent and manipulative practices.

In addition, the Commission believes that proposed amended Rule G–21 also will help protect investors and the public interest by helping ensure that advertisements present a fair statement of the services, products, or municipal securities advertised.

The Commission believes that proposed Rule G–40 is consistent with the provisions of Section 15B(b)(2)(C)³⁰⁶ of the Act because it will help prevent fraudulent and manipulative practices by prohibiting municipal advisors from making any false, exaggerated, unwarranted, promissory or misleading statement or claim in an advertisement. Proposed Rule G–40 requires that advertisements of municipal advisors be based on the principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for municipal entities and obligated persons to evaluate the information presented in such advertisements. A municipal advisor will not be able to omit any material fact or qualification if the omission, in light of the context of the material present, would cause the advertisement to be misleading. Further, the prescriptive nature of proposed Rule G–40 provides guidelines for municipal advisors to follow that would help prevent fraudulent and manipulative practices.

In addition, the Commission believes that proposed Rule G–40 will help

protect investors, municipal entities, obligated persons and the public interest by providing prescriptive requirements that will help ensure that advertisements present a fair statement of the municipal advisory services advertised.

The Commission also finds that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv), in that it does not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons.³⁰⁷ For some one-time initial compliance costs, small municipal advisory firms may incur proportionally larger costs than larger firms. However, for many other ongoing costs, such as costs associated with principal approval and record-keeping requirements, as well as investments in advertisements previously developed but that would no longer be compliant, the costs should be proportionate to the size of the firm. Thus, the Commission believes it is unlikely that proposed Rule G–40 would have an outsized impact on small firms.

In approving the proposed rule change, the Commission also has considered the impact of the proposed rule change, on efficiency, competition, and capital formation.³⁰⁸ The Commission does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes, through promoting regulatory consistency of certain MSRB advertising standards with those of other financial regulators, proposed amended Rule G–21 may improve efficiency in the form of less unnecessary complexity for dealers and reduced burdens and compliance costs over time, because such additional regulatory consistency should assist dealers with developing uniform policies and procedures. The Commission believes this may also benefit both retail and institutional investors, where transparency, consistency, truthful and accurate information and ease of comparison of different financial services would be highly valued. While dealers may experience increased costs because of the new requirements, these costs should not be significant for dealers also registered with FINRA as much of proposed amended Rule G–21 would align with FINRA Rule 2210. The Commission believes proposed

amended Rule G–21 would not impose an unreasonable burden on dealers, and the likely benefits, such as the prevention of fraudulent and manipulative advertising by dealers and the protection of investors, justify such costs.

The Commission believes that one benefit of proposed Rule G–40 may be that municipal advisors provide clients more accurate information through advertising, which may lead municipal entities and obligated persons to more informed decision-making when selecting municipal advisors. Furthermore, the Commission believes that as a result of municipal advisor compliance with proposed Rule G–40's advertising standards, municipal entities and obligated persons may be able to more easily establish objective criteria to use in selecting municipal advisors that may increase the likelihood that municipal advisors are hired because of their qualifications as opposed to other reasons. In addition, the Commission believes that transparency, consistency, truthful and accurate information in advertising should benefit municipal entities and obligated persons in general. Although municipal advisors are likely to incur costs associated with compliance with the proposed Rule G–40, the cost would be justified by the likely benefits of the proposed rule, such as the prevention of fraudulent and manipulative advertising by municipal advisors and the protection of municipal entities and obligated persons.

The Commission has reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation.

As noted above, the Commission received four comment letters on the Notice of Filing. The Commission believes that the MSRB, through its responses and its commitment to provide additional interpretive guidance prior to the effective date of the proposed rule change, has addressed commenters' concerns.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁰⁹ that the proposed rule change (SR–MSRB–2018–01) be, and hereby is, approved.

³⁰⁴ See 15 U.S.C. 78o–4(b)(2)(C).

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ See 15 U.S.C. 78o–4(b)(2)(L)(iv).

³⁰⁸ 15 U.S.C. 78c(f).

³⁰⁹ 15 U.S.C. 78s(b)(2).

³¹⁰ 17 CFR 200.30–3(a)(12).

For the Commission, pursuant to delegated authority.³¹⁰

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83175; File No. SR-CBOE-2018-037]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Operation of Its Flexible Exchange Options Pilot Program

May 4, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2018, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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 Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Flexible Exchange Options (“FLEX Options”) pilot program regarding permissible exercise settlement values for FLEX Index Options.⁵

(additions are *italicized*; deletions are [bracketed])

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapter XXIVA. See Cboe Options Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), and 29.18. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

Cboe Exchange, Inc. Rules

* * * * *

Rule 24A.4. Terms of FLEX Options

(a)–(c) (No change).

. . . *Interpretations and Policies:*

.01 FLEX Index Option PM

Settlements Pilot Program:

Notwithstanding subparagraph (a)(2)(iv) above, for a pilot period ending the earlier of [May 3] *November 5, 2018* or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option that expires on an Expiration Friday may have any exercise settlement value that is permissible pursuant to subparagraph (b)(3) above.

.02 (No change).

* * * * *

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 28, 2010, the Exchange received approval of a rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index Options.⁶ The Exchange has extended the pilot period seven times, which is currently set to expire on the earlier of May 3, 2018 or the date on which the

pilot program is approved on a permanent basis.⁷ The purpose of this rule change filing is to extend the pilot program through the earlier of November 5, 2018 or the date on which the pilot program is approved on a permanent basis. This filing simply seeks to extend the operation of the pilot program and does not propose any substantive changes to the pilot program.

Under Rule 24A.4, *Terms of FLEX Options*, a FLEX Option may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for a FLEX Index Option can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities (“a.m. settlement” or “p.m. settlement,” respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.⁸ However, prior to the

⁷ See Securities Exchange Act Release Nos. 64110 (March 23, 2011), 76 FR 17463 (March 29, 2011) (SR-CBOE-2011-024) (extending the pilot program through the earlier of March 30, 2012 or the date on which the pilot program is approved on the permanent basis); 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR-CBOE-2012-027) (extending the pilot through the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis); 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR-CBOE-2012-102) (extending the pilot program through the earlier of November 2, 2013 or the date on which the pilot program is approved on a permanent basis); 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR-CBOE-2013-099) (extending the pilot program through the earlier of November 3, 2014 or the date on which the pilot program is approved on a permanent basis); 73460 (October 29, 2014), 79 FR 65464 (November 4, 2014) (SR-CBOE-2014-080) (extending the pilot program through the earlier of May 3, 2016 or the date on which the pilot program is approved on a permanent basis); 77742 (April 29, 2016), 81 FR 26857 (May 4, 2016) (SR-CBOE-2016-032) (extending the pilot program through the earlier of May 3, 2017 or the date on which the pilot program is approved on a permanent basis); and 80443 (April 12, 2017), 82 FR 18331 (April 18, 2017) (SR-CBOE-2017-032) (extending the pilot program through the earlier of May 3, 2018 or the date on which the pilot program is approved on a permanent basis). At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. See Approval Order, *supra* note 6. The pilot program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. See *id.* and Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR-CBOE-2012-040).

⁸ See Rule 24A.4(b)(3); see also Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR-CBOE-92-1993).

⁶ Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) (“Approval Order”). The initial pilot period was set to expire on March 28, 2011, which date was added to the rules in 2010. See Securities Exchange Act Release No. 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR-CBOE-2010-026).

initiation of the exercise settlement values pilot, only a.m. settlements were permitted if a FLEX Index Option expired on, or within two business days of, a third Friday-of-the-month expiration ("Expiration Friday").⁹

Under the exercise settlement values pilot, this restriction on p.m. and specified average price settlements in FLEX Index Options was eliminated.¹⁰ The exercise settlement values pilot is currently set to expire on the earlier of May 3, 2018 or the date on which the pilot program is approved on a permanent basis.

Cboe Options is proposing to extend the pilot program through the earlier of November 5, 2018 or the date on which the pilot program is approved on a permanent basis. Cboe Options believes the pilot program has been successful and well received by its Trading Permit Holders and the investing public for the period that it has been in operation as a pilot. In support of the proposed extension of the pilot program, and as required by the pilot program's Approval Order, the Exchange has submitted to the Securities and Exchange Commission (the "Commission") pilot program reports regarding the pilot, which detail the Exchange's experience with the program. Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying an Expiration Friday, p.m.-settled FLEX Index Options series.¹¹ The annual reports also contained information and analysis of FLEX Index Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open

interest. In providing the pilot reports to the Commission, the Exchange has previously requested confidential treatment of the pilot reports under the Freedom of Information Act ("FOIA").¹²

The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement (as discussed below).

In that regard, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, Cboe Options continues to believe that the restrictions on exercise settlement values are no longer necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.¹³

¹² 5 U.S.C. 552.

¹³ In further support, the Exchange also notes that the p.m. and specified average price settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, Expiration Friday. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates (or on the expiration dates addressed under the pilot program). The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the over-the-counter ("OTC") markets that expire on or near Expiration Friday and have a p.m. or specified average exercise settlement value. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange ("NYSE") at the close that are no longer relevant in today's market. Today, the Exchange believes stock exchanges are able to better handle volume. There are multiple primary listing and unlisted trading privilege ("UTP") markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today, order flow is predominantly electronic and the ability to smooth out openings and closes is greatly reduced (e.g., market-on-close procedures work just as well as openings). Also, other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as NYSE, so many stocks are not subject to the same procedures on Expiration Friday. In addition, the Exchange believes that NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this

To the contrary, Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Index Options in accordance with Rules 24A.7, *Position Limits and Reporting Requirements* and 24A.8, *Exercise Limits*. Additionally, all FLEX Options remain subject to the position reporting requirements in paragraph (a) of Cboe Options Rule 4.13, *Reports Related to Position Limits*.¹⁴ Moreover, the Exchange and its Trading Permit Holder organizations each have the authority, pursuant to Cboe Options Rule 12.10, *Margin Required is Minimum*, to impose additional margin as deemed advisable. Cboe Options continues to believe these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

Cboe Options is also cognizant of the OTC market, in which similar restrictions on exercise settlement values do not apply. Cboe Options

respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options (or certain average price settled options related to the closing price) that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange continues to believe that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

¹⁴ Cboe Options Rule 4.13(a) provides that "[i]n a manner and form prescribed by the Exchange, each Trading Permit Holder shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered." For purposes of Rule 4.13, the term "customer" in respect of any Trading Permit Holder includes "the Trading Permit Holder, any general or special partner of the Trading Permit Holder, any officer or director of the Trading Permit Holder, or any participant, as such, in any joint, group or syndicate account with the Trading Permit Holder or with any partner, officer or director thereof." Rule 4.13(d).

017). The Exchange has determined to limit the averaging parameters to three alternatives: the average of the opening and closing index values on the expiration date; the average of intra-day high and low index values on the expiration date; and the average of the opening, closing, and intra-day high and low index values on the expiration date. Any changes to the averaging parameters established by the Exchange would be announced to Trading Permit Holders via circular.

⁹ For example, prior to the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

¹⁰ No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

¹¹ The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for Expiration Friday, a.m.-settled FLEX Index series and Expiration Friday Non-FLEX Index series overlying the same index as an Expiration Friday, p.m.-settled FLEX Index option.

continues to believe that the pilot program is appropriate and reasonable and provides market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. Cboe Options continues to believe that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened counterparty creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.

If, in the future, the Exchange proposes an additional extension of the pilot program, or should the Exchange propose to make the pilot program permanent, the Exchange will submit, along with any filing proposing such amendments to the pilot program, an annual report (addressing the same areas referenced above and consistent with the pilot program's Approval Order) to the Commission at least two months prior to the expiration date of the program. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot program's Approval Order. Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the pilot program is consistent with the Exchange Act. The Exchange will make public all data and analyses previously submitted to the Commission under the pilot program, as well as any data and analyses it makes to the Commission under the pilot program in the future.

As noted in the pilot program's Approval Order, any positions established under the pilot program would not be impacted by the expiration of the pilot program.¹⁵

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the

"Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the pilot program, which permits additional exercise settlement values, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange believes that it has not experienced any adverse effects from the operation of the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. The Exchange also believes that the extension of the exercise settlement values pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes there is sufficient investor interest and demand in the pilot program to warrant its extension. The Exchange believes that, for the period that the pilot has been in operation, the program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange believes that it has not experienced any adverse market effects with respect to the pilot program, including any adverse market volatility effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement. Cboe Options believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description

¹⁵ For example, a position in a p.m.-settled FLEX Index Option series that expires on Expiration Friday in January 2019 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. See Approval Order at footnotes 9 and 10, *supra* note 6.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ *Id.*

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to extend the pilot program prior to its expiration on May 3, 2018, and maintain the status quo, thereby reducing market disruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.²³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2018-037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2018-037. 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-CBOE-2018-037 and should be submitted on or before May 31, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-09924 Filed 5-9-18; 8:45 am]

BILLING CODE 8011-01-P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2017-0034]

Rescission of Social Security Rulings Related to Special Payments at Age 72

AGENCY: Social Security Administration.

²⁴ 17 CFR 200.30-3(a)(12) and (59).

ACTION: Notice of rescission of Social Security Rulings.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Acting Commissioner of Social Security gives notice of the rescission of Social Security Rulings (SSR): SSR 67-28; SSR 68-13; SSR 68-36; SSR 68-37; SSR 68-52; SSR 68-78; SSR 70-23c; SSR 72-27; and SSR 74-27c.

DATES: The rescission is effective May 10, 2018.

FOR FURTHER INFORMATION CONTACT:

Linda Appler, Social Security Administration, (410) 966-6760 or Regulations@ssa.gov. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this notice, we are doing so in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

We are rescinding the following SSRs:

- SSR 67-28: Section 228(c)(1) and (h)(2).—Special Age 72 Payments For Uninsured Individuals—Reduction Because Of Eligibility For Governmental Pension;
- SSR 68-13: Sections 228(c)(1) and 228(h)(2).—Special Age 72 Payments—Governmental Pension System—Teachers' Retirement Fund;
- SSR 68-36: Section 228(c) and 228(h)(2).—Special Age 72 Payment—Reduction Because Of Eligibility For Veterans' Administration Pension;
- SSR 68-37: Section 228(c) and (h).—Special Age 72 Payment—Eligibility For Teacher's Annuity Purchased From Personal Funds Not Cause For Offset;
- SSR 68-52: Sections 228(c)(1), 228(h)(2) and (3).—Special Age 72 Payments For Uninsured Individual—Reduction Due To Commutation Of Periodic Pension;
- SSR 68-78: Sections 228(c)(1) and (h)(2).—Special Age 72 Payments For Uninsured Individuals—Reduction

Because Of Eligibility For Governmental Pension;

- SSR 70–23c: Section 228(c).—Special Age 72 Payments—Effect On Claimant's Eligibility Where Application Not Filed By Spouse Who Is Eligible For Periodic Benefit Under Governmental Pension System;

- SSR 72–27: Sections 228 (of Social Security Act) and 103 of Social Security Amendments of 1965.—Special Age 72 and Hospital Insurance Benefits—5 Years Continuous Residence Requirement; and

- SSR 74–27c: Sections 205(g), 228(a) and (e) (42 U.S.C. 405(g), 428(a), and 428(e)).—Special Age 72 Payments—Application and Residence Requirements—Constitutionally [*sic*] as to Puerto Rican Residents.

These SSRs interpret and apply our rules on “Special Payments at Age 72” in 20 CFR 404.380, 404.381, 404.382, 404.383, and 404.384. In today’s **Federal Register**, we published a final rule that removes our “Special Payments at Age 72” rules, and revises other rules that refer to special age 72 payments. As we explain in that final rule, we are removing our rules on special age 72 payments because they are obsolete and no longer needed. We are rescinding these SSRs for the same reason.

(Catalog of Federal Domestic Assistance, Programs Nos. Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance.)

Nancy A. Berryhill,

Acting Commissioner of Social Security.

[FR Doc. 2018–09911 Filed 5–9–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10407]

Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of International Security and Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act. The Act provides for penalties on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North

Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists, and other items with the potential of making such a material contribution when added through case-by-case decisions.

DATES: April 30, 2018.

FOR FURTHER INFORMATION CONTACT: *On general issues:* Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930, durhampk@state.gov. *For U.S. Government procurement ban issues:* Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079, mooren@state.gov.

SUPPLEMENTARY INFORMATION: On April 30, 2018 the U.S. Government applied the measures authorized in Section 3 of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 109–353) against the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

Abascience Tech Co., Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Easy Fashion Metal Products Trade Company [aka Easyfashion Industries] (China) and any successor, sub-unit, or subsidiary thereof;

Emily Liu (Chinese individual);
Karl Lee [aka Li Fangwei] (Chinese individual);

Raybeam Optronics Co., Ltd (China) and any successor, sub-unit, or subsidiary thereof;

Shanghai Rotech Pharmaceutical Engineering Company (China) and any successor, sub-unit, or subsidiary thereof;

Sinotech (Dalian) Carbon and Graphite Corporation (SCGC) (China) and any successor, sub-unit, or subsidiary thereof;

Sunway Tech Co., Ltd (China) and any successor, sub-unit, or subsidiary thereof;

T-Rubber Co. Ltd (China) and any successor, sub-unit, or subsidiary thereof;

Sakr Factory for Developmental Industries (Egypt) and any successor, sub-unit, or subsidiary thereof;

Mojtaba Ghasemi (Iranian individual);

Islamic Revolutionary Guard Corps Qods Force (IRGC QF) (Iran) and any successor, sub-unit, or subsidiary thereof;

Pars Aviation Service Company (PASC) (Iran) and any successor, sub-unit, or subsidiary thereof;

Defense Industries Organization (DIO) (Iran) and any successor, sub-unit, or subsidiary thereof;

Saeng Pil Trading Corporation (SPTC) (North Korea) and any successor, sub-unit, or subsidiary thereof;

Second Economic Committee (SEC) Korea Ryonbong General Corporation (North Korea) and any successor, sub-unit, or subsidiary thereof;

183rd Guard Air Defense Missile Regiment (Russia) and any successor, sub-unit, or subsidiary thereof;

Instrument Design Bureau (KBP) Tula (Russia) and any successor, sub-unit, or subsidiary thereof;

Gatchina Surface-to-Air Missile Training Center (Russia) and any successor, sub-unit, or subsidiary thereof;

Russian General Staff Main Intelligence Directorate (GRU) (Russia) and any successor, sub-unit, or subsidiary thereof;

18th Central Scientific Research Institute (18th TsNII) Scientific Research Center (NITs) (Kursk) (Russia) and any successor, sub-unit, or subsidiary thereof;

Russian Research and Production Concern (BARL) and any successor, sub-unit, or subsidiary thereof;

Scientific Studies and Research Center (SSRC) (Syria) and any successor, sub-unit, or subsidiary thereof;

Lebanese Hizballah (Syria) and any successor, sub-unit, or subsidiary thereof;

Megatrade (Syria) and any successor, sub-unit, or subsidiary thereof;

Syrian Air Force (Syria) and any successor, sub-unit, or subsidiary thereof;

Seden Denizcilik Hizmetleri Sanayi de Ticaret Limited (Turkey) and any successor, sub-unit, or subsidiary thereof; and

Yona Star International (United Arab Emirates) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the United States Government may procure

or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the United States Government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government, except to the extent that the Secretary of State otherwise may determine;

3. No United States Government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise.

Christopher A. Ford,

Assistant Secretary of State for International Security and Nonproliferation.

[FR Doc. 2018-10091 Filed 5-9-18; 8:45 am]

BILLING CODE 4710-25-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Continuation and Request for Nominations for the Industry Trade Advisory Committees

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for applications.

SUMMARY: The United States Trade Representative (Trade Representative) and the Secretary of Commerce (Secretary) have established a new four-year charter term ending in February 2022, and are accepting applications from qualified individuals interested in serving as a member of an Industry Trade Advisory Committee (ITAC). The ITACs provide detailed policy and technical advice, information, and recommendations to the Secretary and

the Trade Representative regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting industry sectors, and perform other advisory functions relevant to U.S. trade policy matters. There currently are opportunities for membership on each ITAC and we will accept nominations throughout the charter term.

DATES: We will accept nominations for membership on the ITACs throughout the four-year charter term.

ADDRESSES: Submit nominations via email to ITAC@trade.gov.

FOR FURTHER INFORMATION CONTACT: Ingrid Mitchem, Director, Industry Trade Advisory Center, U.S. Department of Commerce at 202-482-3268, or Gregory Walters, Assistant United States Trade Representative for Intergovernmental Affairs and Public Engagement at Gregory.M.Walters@ustr.eop.gov or 202-395-2558. You can find additional information about the ITACs on the International Trade Administration website at www.trade.gov/itac.

SUPPLEMENTARY INFORMATION:

I. Background

Section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155), establishes a private-sector trade advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(c)(2) (19 U.S.C. 2155(c)(2)) directs the President to establish sectoral or functional trade advisory committees, as appropriate, including representatives of industry, labor, agriculture, and services, including small business, in the sector or functional area concerned, to provide detailed policy and technical advice, information, and recommendations regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting industry sectors, and perform other advisory functions relevant to U.S. trade policy matters as requested.

II. What do the ITACs do?

The ITACs provide detailed policy and technical advice, information, and recommendations to the Secretary and the Trade Representative on trade policy matters including: (1) Negotiating objectives and bargaining positions before entering into trade agreements; (2) the impact of the implementation of trade agreements on the relevant sector; (3) matters concerning the operation of any trade agreement once entered into; and (4) other matters arising in

connection with the development, implementation, and administration of the trade policy of the United States. The nonpartisan, industry input provided by the ITACs is important in developing unified trade policy objectives and positions when the United States negotiates and implements trade agreements.

The ITACs address market-access problems, trade barriers, tariffs, discriminatory foreign procurement practices, and information, marketing, and advocacy needs of their industry sector. Eleven ITACs (ITACs 1-11) provide advice and information on issues that affect specific sectors of U.S. industry. Three ITACs (ITACs 12-14) focus on crosscutting functional issues that affect all industry sectors and include specifically appointed members along with non-voting members from the industry specific ITACs to represent a broad range of industry perspectives. The ITACs may address other trade policy issues, e.g., government procurement and subsidies, in ad hoc working groups.

III. What is the ITAC slate for 2018-2022?

When the Trade Representative and the Secretary organize the ITACs, the Trade Act requires that they consult with interested private organizations and consider:

- Patterns of actual or potential competition between U.S. industry and agriculture and foreign enterprise in international trade.
- The character of the nontariff barriers and other distortions affecting such competition.
- The necessity for reasonable limits on the number and size of the ITACs.
- That the product lines covered by each ITAC are reasonably related.

The Office of the U.S. Trade Representative and the U.S. Department of Commerce requested comments on proposed changes to the slate of ITACs (83 FR 3253) and received 23 written submissions in response. A majority of the responses were a substantially similar letter in opposition to merging ITAC 7 and ITAC 9. A significantly smaller portion advocated against the elimination of the Committee of Chairs.

We have carefully considered these submissions and other factors including the nature of the U.S. industry in various sectors, the level of interest in serving on an ITAC (using the number of members and applications for appointment during the 2014-2018 charter terms), the level of activity of each ITAC (using the number of meetings and recommendations submitted during the 2014-2018 charter

terms), and constraints on the resources to support and engage with the ITACs. We also are renaming ITAC 10 to Services to more accurately reflect the functions of the committee. Based on all of this information, pursuant to section 135(c)(2) of the Trade Act, the Secretary and the Trade Representative have established new four-year charter terms for the following ITACs, that began on February 14, 2018 and will end on February 14, 2022.

ITAC 1 Aerospace Equipment
 ITAC 2 Automotive Equipment and Capital Goods
 ITAC 3 Chemicals, Pharmaceuticals, Health/Science Products and Services
 ITAC 4 Consumer Goods
 ITAC 5 Forest Products, Building Materials, Construction and Nonferrous Metals
 ITAC 6 Energy and Energy Services
 ITAC 7 Steel
 ITAC 8 Digital Economy
 ITAC 9 Small and Minority Business
 ITAC 10 Services
 ITAC 11 Textiles and Clothing
 ITAC 12 Customs Matters and Trade Facilitation
 ITAC 13 Intellectual Property Rights
 ITAC 14 Standards and Technical Trade Barriers

The ITACs are subject to the provisions of the Federal Advisory Committee Act. *See* 19 U.S.C. 2155(f); 5 U.S.C. App. II.

IV. Membership

Each ITAC consists of members with experience relevant to the industry sector for ITACs 1 through 11 or the subject area for ITACs 12 through 14. All ITAC members serve in a representative capacity (there are no special government employees (SGEs)) and present the views and interests of a sponsoring U.S. entity or U.S. organization and the entity's or organization's subsector (if applicable). In selecting members, the Secretary and the Trade Representative consider the nominee's ability to carry out the objectives of the ITAC, including knowledge and expertise of the industry and of trade matters relevant to the work of the ITAC, and ensuring that the ITAC is balanced in terms of points of view, demographics, geography, and entity or organization size. Appointments are made without regard to political affiliation.

The Secretary and the Trade Representative appoint all ITAC members for a term of four-years or until the ITAC charter expires, and members serve at the discretion of the Secretary and the Trade Representative. Individuals can be reappointed for any

number of terms. Appointments are made at the time an ITAC is re-chartered and periodically throughout the four-year charter term. Appointments expire at the end of the charter term, in this case, on February 14, 2022.

ITAC members serve without compensation, including reimbursement of expenses. Members are responsible for all expenses they incur to attend meetings or otherwise participate in ITAC activities.

The ITACs meet as needed, depending on various factors such as the level of activity of trade negotiations and the needs of the Secretary and the Trade Representative. On average, each ITAC meet six times a year in Washington, DC.

V. Request for Nominations

The Secretary and the Trade Representative are soliciting nominations for membership on the ITACs.

A. Eligibility Requirements

To apply for membership, an applicant must meet the following eligibility criteria:

1. The applicant must be a U.S. citizen.
2. The applicant cannot be a full-time employee of a U.S. governmental entity.
3. The applicant cannot be registered with the U.S. Department of Justice under the Foreign Agents Registration Act.
4. The applicant must be able to obtain and maintain a security clearance.
5. The applicant must represent either:
 - a. A U.S. entity that is directly engaged in the import or export of goods or services or that provides services in direct support of the international trading activities of other entities; or
 - b. A U.S. organization that trades internationally, represents members that trade internationally, or, consistent with the needs of an ITAC as determined by the Secretary and the Trade Representative, represents members who have a demonstrated interest in international trade.

For eligibility purposes, a "U.S. entity" is a for-profit firm engaged in commercial, industrial, or professional activities that is incorporated in the United States (or is an unincorporated U.S. firm with its principal place of business in the United States) that is controlled by U.S. citizens or by other U.S. entities. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is known to be controlled,

directly or indirectly, by non-U.S. citizens or non-U.S. entities.

For eligibility purposes, a "U.S. organization" is an organization, including a trade association, labor union or organization, and nongovernmental organization (NGO), established under the laws of the United States, that is controlled by U.S. citizens, by another U.S. organization (or organizations), or by a U.S. entity (or entities), as determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable. To qualify as a U.S. organization, more than 50 percent of the board of directors (or comparable governing body) and more than 50 percent of the membership of the organization to be represented must be U.S. citizens, U.S. organizations, or U.S. entities. Additionally, in order for an NGO to qualify as a U.S. organization, at least 50 percent of the NGO's annual revenue must be attributable to nongovernmental U.S. sources.

An applicant who will represent an entity or organization known to have 10 percent or greater non-U.S. ownership of its shares or equity, non-U.S. board members, non-U.S. membership, or non-U.S. funding sources, as applicable, must certify that this non-U.S. interest does not constitute control and will not adversely affect his/her ability to serve as a trade advisor to the United States.

The Secretary and the Trade Representative have appointed, and will consider nominees, who represent the public health or health care community to ITACs 3 and 13, and environmental viewpoints to ITACs 3 and 5.

B. How do I apply?

To be considered for ITAC membership, interested persons should submit the following to the Director of the Industry Trade Advisory Center at the U.S. Department of Commerce at ITAC@trade.gov:

1. Name, title, affiliation, and contact information of the individual requesting consideration.
2. The ITAC for which the individual is applying for appointment.
3. A sponsor letter on the entity's or organization's letterhead containing a brief description of why the Secretary and the Trade Representative should consider the individual for membership.
4. The individual's personal resume or comprehensive biography demonstrating knowledge of international trade issues.
5. An affirmative statement that the individual and the sponsoring entity or organization s/he represents meet all eligibility requirements.

6. Information regarding the sponsoring entity or organization, including the control of the entity or organization to be represented and the entity's or organization's size and ownership, product or service line, and trade activities.

7. You can find information on the additional requirements for consultants and legal advisors, which vary depending on the nature of the entity or organization and the interests the individual will represent, on the International Trade Administration website at www.trade.gov/itac or by contacting the Industry Trade Advisory Center at ITAC@trade.gov.

The Secretary and the Trade Representative will consider applicants who meet the eligibility criteria based on the following factors: Ability to represent the sponsoring U.S. entity's or U.S. organization's and its subsector's interests on trade matters; knowledge of and experience in trade matters relevant to the work of the ITAC; and ensuring that the ITAC is balanced in terms of points of view, demographics, geography, and entity or organization size.

Gregory Walters,

Assistant United States Trade Representative for Intergovernmental Affairs and Public Engagement, Office of the United States Trade Representative.

[FR Doc. 2018-09966 Filed 5-9-18; 8:45 am]

BILLING CODE 3290-F8-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty First RTCA SC-206 Aeronautical Information and Meteorological Data Link Services (AIS) Plenary

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

ACTION: Fifty First RTCA SC-206 Aeronautical Information and Meteorological Data Link Services (AIS) Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Fifty First RTCA SC-206 Aeronautical Information and Meteorological Data Link Services (AIS) Plenary.

DATES: The meeting will be held June 11-15, 2018 8:30 a.m.-5:00 p.m.

ADDRESSES: The meeting will be held at: AOPA HQ, 411 Aviation Way, Frederick, MD 21701.

FOR FURTHER INFORMATION CONTACT:

Karan Hofmann at khofmann@rtca.org or 202-330-0680, or The RTCA

Secretariat, 1150 18th Street NW, Suite 910, Washington, DC, 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or website at <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of the Fifty First RTCA SC-206 Aeronautical Information and Meteorological Data Link Services (AIS) Plenary. The agenda will include the following:

11 June: Monday

1:00 p.m.-2:00 p.m.

Opening Plenary

1. Opening Remarks: DFO, RTCA, Chairman, And Host
2. Attendees' Introductions
3. Discussion On Results From Meeting With WG-76

2:00 p.m.-5:00 p.m.

Sub-Group Meetings

12 June: Tuesday

08:30 a.m.-5:00 p.m.

Sub-Group Meetings

13 June: Wednesday

08:30 a.m.-5:00 p.m.

Sub-Group Meetings

14 June: Thursday

08:30 a.m.-12:00 p.m.

Closing Plenary

1. Opening Remarks: DFO, RTCA, Chairman, And Host
2. Attendees' Introductions
3. Review and Approval Of Meeting Agenda
4. Approval of Previous Meeting Minutes (Melbourne, FL)
5. Sub-Groups Reports
 - a. SG1: CSC And Other SC Coordination (ISRAs)
 - b. SG5: FIS-B MOPS
6. Industry Coordination
 - a. CDM
7. Decision on Tor Changes/Rejoining WG-76
8. Future Meetings Plans and Dates
9. Action Item Review
10. Other Business
11. Adjourn Plenary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public

may present a written statement to the committee at any time.

Issued in Washington, DC, on May 12, 2018.

Michelle Swearingen,

Systems and Equipment Standards Branch, AIR-6B0, Policy and Innovation Division, AIR-600, Federal Aviation Administration.

[FR Doc. 2018-09967 Filed 5-9-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2018-0008-N-4]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection and request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA is informing the public that FRA has made five proposed revisions to the Quarterly Positive Train Control (PTC) Progress Report Form (Form FRA F 6180.165) and Annual PTC Progress Report Form (Form FRA F 6180.166), which the Office of Management and Budget (OMB) previously approved on August 15, 2017, under its regular processing procedures. Before submitting this revised information collection request (ICR) to OMB for regular clearance and approval, FRA is soliciting public comment on specific aspects of the proposed ICR.

DATES: Interested persons are invited to submit comments on or before July 9, 2018.

ADDRESSES: Submit written comments on the ICR activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W33-497, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W34-212, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB Control Number 2130-0553," and

should also include the title of the ICR. Alternatively, comments may be faxed to (202) 493–6216 or (202) 493–6497, or emailed to Mr. Brogan at Robert.Brogan@dot.gov, or Ms. Toone at Kim.Toone@dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W33–497, Washington, DC 20590 (telephone: (202) 493–6292); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W34–212, Washington, DC 20590 (telephone: (202) 493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days’ notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–12.

Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information

collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA’s estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a “user-friendly” format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

II. Background on the Quarterly and Annual PTC Reporting Requirements

Under the Positive Train Control Enforcement and Implementation Act of 2015 (PTCEI Act), each railroad subject to 49 U.S.C. 20157(a) must submit an annual progress report to FRA by March

31, 2016, and annually thereafter, until PTC system implementation is completed. 49 U.S.C. 20157(c)(1). The PTCEI Act specifically requires each railroad to provide certain information in the annual reports regarding its progress toward implementing a PTC system, in addition to any other information FRA requests. *See id.* In addition, 49 U.S.C. 20157(c)(2) requires FRA to conduct compliance reviews at least annually to ensure each railroad is complying with its revised PTC Implementation Plan (PTCIP), including any FRA-approved amendments. The PTCEI Act requires railroads to provide information to FRA that FRA determines is necessary to adequately conduct such compliance reviews. 49 U.S.C. 20157(c)(2).

Under its statutory and regulatory investigative authorities, FRA currently requires, and seeks to continue requiring, each subject railroad to submit Quarterly PTC Progress Reports (Form FRA F 6180.165) and Annual PTC Progress Reports (Form FRA F 6180.166) on its PTC system implementation progress. *See* 49 U.S.C. 20157(c)(1)–(2); *see also* 49 U.S.C. 20107; 49 CFR 236.1009(h).

Specifically, in addition to the Annual PTC Progress Report (Form FRA F 6180.166) due each March 31 under 49 U.S.C. 20157(c)(1), railroads must provide quarterly progress reports covering the preceding three-month period and submit the forms to FRA on the dates in the following table until full PTC system implementation is completed:

	Coverage period	Due dates for quarterly reports
Q1	January 1–March 31	April 30.
Q2	April 1–June 30	July 31.
Q3	July 1–September 30	October 31.
Q4	October 1–December 31	January 31.

Each railroad must submit its Quarterly PTC Progress Reports on Form FRA F 6180.165 and its Annual PTC Progress Reports on Form FRA F 6180.166 on FRA’s Secure Information Repository at <https://sir.fra.dot.gov>.

II. Proposed Revisions to the Quarterly and Annual PTC Progress Report Forms

On August 15, 2017, OMB approved the Quarterly PTC Progress Report (Form FRA F 6180.165) and Annual PTC Progress Report (Form FRA F 6180.166) for a period of one year, expiring on August 31, 2018. The current Quarterly PTC Progress Report Form and Annual PTC Progress Report

Form, as approved through August 31, 2018, can be accessed and downloaded in FRA’s eLibrary at: <https://www.fra.dot.gov/eLib/details/L17365> and <https://www.fra.dot.gov/eLib/details/L17366>, respectively. These versions of the forms took into account the Association of American Railroads’ written comments on behalf of itself and its member railroads; the American Public Transportation Association’s written comments on behalf of Northeast Illinois Commuter Rail System, the Utah Transit Authority, the Tri-County Metropolitan Transportation District of Oregon, and the Fort Worth Transportation Authority; and industry

stakeholders’ comments during FRA’s public meeting on April 19, 2016. FRA published minutes from the meeting on www.regulations.gov under Docket No. FRA–2016–0002. For a summary of the oral and written comments and FRA’s responses to the comments, please see 81 FR 28140, May 9, 2016.

Following the 60-day public comment period after this notice is published, FRA will request OMB’s re-approval of the forms, with the five changes described below. First, in Section 1 of the Quarterly PTC Progress Report Form (FRA F 6180.165), FRA proposes revising the row “Territories Where Revenue Service Demonstration Has

Been Initiated” to state “Territories in Revenue Service Demonstration or in PTC Operation” for clarity, based on additional feedback from the industry following OMB’s approval of the form on August 15, 2017. FRA intended this row to include any and all territories where a railroad had initiated revenue service demonstration (RSD), even if a railroad subsequently obtained PTC System Certification from FRA and is operating its PTC system in revenue service. The purpose of this row is to collect information regarding a railroad’s progress toward meeting the statutory criteria under 49 U.S.C. 20157(a)(3)(B)(vi)–(vii), if applicable. Based on feedback from the industry, FRA proposes clarifying the language in this row in Section 1 so railroads understand that a railroad can include in this row the number of territories where its PTC system is in RSD or in operation. This proposed change does not result in any additional reporting burden as it is only a clarifying change.

Second, in footnotes 4 and 6 of the Quarterly PTC Progress Report Form (FRA F 6180.165), FRA proposes adding a hyperlink to Appendix A. The footnotes currently state: “If a particular category listed in this table does not apply to the railroad’s technology, please indicate ‘N/A.’ A railroad may add categories or subcategories if it wants to provide more detail.” FRA proposes adding the phrase “in Appendix A” to the second sentence with a hyperlink to that appendix to the form, as it will help direct railroads to the available section of the PDF where they can provide additional information. A hyperlink to Appendix A was in the corresponding footnotes in the prior version of the Quarterly PTC Progress Report Form that OMB approved through June 30, 2017, but the hyperlink was omitted in error from the current version of the form. This proposed change (*i.e.*, adding a

hyperlink to an existing appendix) does not result in any additional reporting burden as it is only a formatting change.

Third, in Section 4 (entitled “Installation/Track Segment Progress—Current Status”) of both the quarterly form and the annual form, FRA proposes replacing the “Testing” option in the drop-down menu with two more precise options—*i.e.*, “Field Testing” and “Revenue Service Demonstration.” This modification will help ensure clearer and more accurate reporting, without imposing an additional reporting burden.

Fourth, with respect to only the Annual PTC Progress Report Form (FRA F 6180.166), FRA proposes to delete a now inapplicable instruction from footnote 7 in Section 4, which stated,

Please note: For the Annual PTC Progress Report due by March 31, 2017, this mandatory geographic requirement (that must be satisfied by either completing Column 5 in Section 4 or submitting a GIS shapefile as described above) is due to FRA by April 30, 2017. Every other part of this form must be completed and submitted to FRA by March 31, 2017. This limited extension applies only in 2017.

FRA delayed the due date for submitting that specific information in 2017 only, per OMB’s request, to ensure railroads had sufficient time to compile and provide the information. FRA proposes removing that note from footnote 7 as it is no longer applicable or necessary. By statute, a railroad’s Annual PTC Progress Report is due by March 31st each year. 49 U.S.C. 20157(c)(1).

Fifth, with respect to both the quarterly form and the annual form, FRA proposes making certain changes to Section 6 (entitled “Update on Interoperability Progress”). FRA proposes removing the portion of the instruction that states a host railroad must provide information about the status of each tenant railroad’s rolling

stock “if the tenant does not have a separate PTCIP on file.” FRA proposes removing this limiting instruction because FRA needs to know the PTC implementation status of any tenant railroad that operates on the host railroad’s property, except any tenant railroad that is subject to an exception under 49 CFR 236.1006(b). In addition, before the final column in the table in Section 6, FRA proposes adding a column entitled, “Scheduled Completion Date for Interoperability Testing.” This information is necessary for FRA to understand the progress a host railroad and each of its required tenant railroads are jointly making toward testing and achieving PTC system interoperability, consistent with host railroad’s PTC Implementation Plan and/or PTC Safety Plan. FRA estimates the additional burden for a host railroad to complete this new reporting requirement would be, on average, approximately 2.5 hours for Class I railroads and large passenger railroads; 1.25 hours for Class II and medium passenger railroads; and thirty minutes for Class III, terminal, and small passenger railroads.

III. Overview of Information Collection

The associated collection of information is summarized below. FRA will submit this information collection request to OMB for regular clearance as required by the PRA.

Titles: Quarterly Positive Train Control Progress Report and Annual Positive Train Control Progress Report.

OMB Control Number: 2130–0553.

Form Number(s): FRA F 6180.165 and FRA F 6180.166.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 41 Railroad Carriers.

Reporting Burden:

Quarterly PTC progress report	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
Form FRA F 6180.165	41 Railroads	164 Reports/Forms	22.84	3,746

FRA notes that the 22.84-hour estimate is an average for all railroads. FRA estimated the quarterly reporting burden is approximately 43 hours for

the 11 Class I and large passenger railroads per quarterly form, approximately 28.75 hours for the 11 Class II and medium passenger railroads

per quarterly form, and approximately 7.75 hours for the 19 Class III, terminal, and small passenger railroads per quarterly form.

Annual PTC progress report	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
Form FRA F 6180.166	41 Railroads	41 Reports/Forms	39.65	1,626

FRA notes that the 39.65-hour estimate is an average for all railroads. FRA estimated the annual reporting burden is approximately 62.5 hours for the 11 Class I and large passenger railroads per annual form, approximately 41.25 hours for the 11 Class II and medium passenger railroads

per annual form, and approximately 25.5 hours for the 19 Class III, terminal, and small passenger railroads per annual form.

Total Estimated Annual Responses for Form FRA F 6180.165: 164.

Total Estimated Annual Burden for Form FRA F 6180.165: 3,746 hours.

Total Estimated Annual Responses for Form FRA F 6180.166: 41.

Total Estimated Annual Burden for Form FRA F 6180.166: 1,625.75.

Respondent Universe: 41 Railroads.

Frequency of Submission: On occasion; quarterly; annually. Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Form FRA F 6180.166—Annual PTC Progress Report Form.	41 railroads	41 reports/forms	39.65 hours	1,626
Form FRA F 6180.165—Quarterly PTC Progress Report Form.	41 railroads	164 reports/forms	22.84 hours	3,746
234.275—Processor-based systems—Railroad letter explaining deviations of a product from requirements.	38 railroads	25 letters	4 hours	100
235.6—Expedited application for approval of certain signal system changes described in this section.	38 railroads	500 expedited applications	5 hours	2,500
—Copy of expedited application to labor union	38 railroads	500 copies	30 minutes	250
—Railroad rescindment letter of request for expedited application of certain signal system changes.	38 railroads	25 letters	6 hours	150
—Revised application for certain signal system changes.	38 railroads	13 applications	5 hours	65
—Copy of railroad revised application to labor union	38 railroads	13 copies	30 minutes	7
236.15—Designation of automatic block, traffic control, train stop, train control, cab signal, or PTC territory in timetable instructions.	38 railroads	13 timetable instructions	60 minutes	7
236.18—Software Management Control Plan, New Railroads.	5 railroads	1 plan	2,150 hours	2,150
—Subsequent years: Updated plans	90 railroads	20 updated plans	1.50 hours	30
236.905—Railroad Safety Program Plan (RSPP), New Railroads.	5 railroads	1 RSPP	135 hours	135
—FRA request for additional information	78 railroads	1 document	135 hours	135
—Railroad request to modify RSPP	78 railroads	1 request for amendment	400 hours	400
236.907–909—Railroad petition for review and approval of Product Safety Plan (PSP).	5 railroads	2 petitions/reviews	19,200 hours	19,200
—Railroad sensitivity analysis supporting railroad risk assessment.	5 railroads	5 analyses	160 hours	800
236.913—Filing and approval of joint PSP	6 railroads	1 joint plan	25,600 hours	25,600
—Informational filing/petition for special approval	6 railroads	6 filings/approval petitions	1,928 hours	11,568
—FRA request for further data after informational filing.	6 railroads	2 data calls/documents	800 hours	1,600
—FRA request for further information within 15 days after receipt of Notice of Product Development.	6 railroads	6 data calls/documents	16 hours	96
—Technical consultation by FRA with railroad on design and planned development of product.	6 railroads	6 consultations	120 hours	720
—Railroad Petition to FRA for final approval	6 railroads	6 petitions	16 hours	96
—Comments to FRA on railroad informational filing or special approval petition.	Public/railroad community ..	7 comments/letters	240 hours	1,680
—Railroad amendment to PSP	6 railroads	15 amendments	160 hours	2,400
—Railroad field testing/informational filing document	6 railroads	6 field tests/documents	3,200 hours	19,200
236.917—Railroad retention of records: results of tests & inspections specified in PSP.	6 railroads	3 procedures	160,000 hours/160,000 hours/40,000 hours.	360,000
—Railroad report that frequency of safety relevant hazards exceeds threshold set forth in PSP.	6 railroads	1 report	104 hours	104
236.919—Railroad Operations and Maintenance Manual (OMM).	6 railroads	6 OMM updates	40 hours	240
—Plans for proper maintenance, repair, inspection, and testing of safety critical products.	6 railroads	6 plans	53,335 hours	320,010
—Documented hardware, software, & firmware revisions in OMM.	6 railroads	6 revisions	6,440 hours	38,640
236.921—Training & qualification program	6 railroads	6 programs	400 hours	2,400
—Trained signalmen & dispatchers	6 railroads	300 trained signalmen + 20 tr. dispatchers.	40 hours + 20 hours	12,400
236.923—Railroad Task analysis	6 railroads	6 analyses/documents	720 hours	4,320
—Railroad records designating other qualified persons.	6 railroads	350 records	10 minutes	58
236.1001—Railroad additional or more stringent PTC rules and other special instructions than prescribed under this section.	38 railroads	3 rules or instructions	80 hours	240
236.1005—Railroad request for relief in PTCIP or RFA to implement PTC system based on minimal quantity of PIH materials traffic.	38 railroads	3 relief requests	64 hours	192
—Railroad request to temporarily reroute trains equipped with PTC onto tracks not equipped with PTC systems and vice versa.	38 railroads	47 requests	8 hours	376
—Written or telephonic notice to FRA Regional Administrator of conditions necessitating emergency rerouting.	38 railroads	47 written or telephonic notices.	2 hours	94
—Planned maintenance: temporary rerouting requests.	38 railroads	720 requests	8 hours	5,760

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Request to FRA for temporary rerouting exceeding 30 days.	38 railroads	361 requests	8 hours	2,888
236.1006—Equipping locomotives operating in PTC territory—Class II or III railroad progress reports for equipping locomotives with onboard apparatus for movements exceeding 20 mph.	38 railroads	35 reports	16 hours	560
236.1007—HSR-125 document accompanying railroad PTC Safety Plan (PTCSP) for host railroads conducting freight or passenger operations at more than 125 mph.	38 railroads	3 HSR-125 documents	3,200 hours	9,600
—Railroad request to use foreign service data before submittal of PTCSP.	38 railroads	2 data requests	8,000 hours	16,000
—Submission of PTCSP with HSR-125 document by host railroad conducting freight or passenger operations at more than 150 mph.	38 railroads	3 PTCSPs with HSR-125 documents.	3,200 hours	9,600
—Railroad request in PTCSP that FRA excuse compliance with one or more of this section's requirements.	38 railroads	1 request	1,000 hours	1,000
236.1009—Railroad filing PTCIP with FRA for a main line track segment requiring PTC system implementation or request for amendment (RFA) to its PTCIP for initiating a new category of service or materially modifying one or more railroad lines requiring a PTC system.	38 railroads	1 PTCIP + 20 RFAs	535 hours + 320 hours	6,935
—Host railroad filing unmodified Type Approval with FRA.	38 railroads	2 documents	8 hours	16
—PTC Development Plan (PTCDP) requesting Type Approval for PTC system or request to modify previous Type Approval with one or more variances.	38 railroads	20 cover letters + 20 modified Type Approvals + 2 PTCDPs.	8 hours + 1,600 hours + 6,400 hours.	44,960
—PTCSP or PTCDP translated from foreign language into English.	38 railroads	1 document	8,000 hours	8,000
—Railroad request for confidentiality for a filing	38 railroads	38 cover letters + 38 confidentiality requests.	8 hours + 800 hours	30,704
—Railroad field testing or independent assessment undertaken at FRA request for Type Approval or PTC System Certification.	38 railroads	190 field tests + 2 assessments.	800 hours	153,600
—Access interviews with railroad personnel associated with Type Approval or PTC System Certification and to determine compliance with this subpart.	38 railroads	76 interviews	30 minutes	38
—Additional information to FRA on PTCDP and PTCSP.	38 railroads	8 documents	400 hours	3,200
236.1011—PTCIP and public comment on PTCIPs, PTCDPs, and PTCSPs.	38 railroads	1 PTCIP + 40 public comments.	143 hours + 8 hours	400
236.1015—PTCSPs—Non-vital overlay	38 railroads	3 PTCSPs	16,000 hours	48,000
—Vital overlay	38 railroads	28 PTCSPs	22,400 hours	627,200
—Stand-alone	38 railroads	1 PTCSP	32,000 hours	32,000
—Railroad conference with FRA on mixed systems	38 railroads	3 conferences	32 hours	96
—PTCSP for Mixed System	38 railroads	1 PTCSP	28,800 hours	28,800
—Railroad provision of additional information to FRA upon request.	38 railroads	19 documents	3,200 hours	60,800
—PTCSP replacing existing certified PTC system ...	38 railroads	19 PTCSPs	3,200 hours	60,800
—Non-quantitative risk assessment to FRA	38 railroads	19 assessments	3,200 hours	60,800
236.1017—Third Party Assessment	38 railroads	1 assessment	8,000 hours	8,000
—Host railroad written request to FRA to confirm whether a specific entity is independent.	38 railroads	1 written request	8 hours	8
—Further information provided to FRA upon request	38 railroads	1 additional document	160 hours	160
—Waiver request regarding production of documents required for third party assessment.	38 railroads	1 waiver request	160 hours	160
—Request for FRA to accept certified information from a foreign railroad regulatory entity.	38 railroads	1 request	32 hours	32
236.1019—Main line track exception addendum	38 railroads	36 MTEAs	160 hours	5,760
—Intercity commuter or passenger line track exception addendum.	38 railroads	19 MTEAs	160 hours	3,040
—Limited operation exception: railroad risk mitigation plan.	38 railroads	19 plans	160 hours	3,040
—Limited operation exception: railroad collision hazard analysis to FRA.	38 railroads	12 analyses	1,600 hours	19,200
—Temporal separation procedures	38 railroads	11 procedures	160 hours	1,760
236.1021—Request for amendment (RFA) to railroad PTCIP/PTCDP/PTCSP.	38 railroads	19 RFAs	160 hours	3,040
—Review and comment on RFA by interested parties.	7 Interested parties	7 reviews + 20 public comments.	3 hours + 16 hours	341
236.1023—Railroad PTC Product Vendor List	38 railroads	38 lists	8 hours	304
—Railroad procedures for action to applicable vendor upon notification of a safety-critical failure, upgrade, patch, revision, replacement, or modification to PTC system.	38 railroads	38 procedures	16 hours	608
—Railroad notification to vendor and FRA of failure, malfunction, or defective condition that decreased or eliminated safety functionality of PTC product.	38 railroads	142 notifications	16 hours	2,272
—Notification updates	38 railroads	142 notice updates	16 hours	2,272

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Railroad and vendor report to FRA of results of investigation of accident or service difficulty related to PTC system or product because of a manufacturing or design defect.	38 railroads	5 reports	400 hours	2,000
—PTC supplier or vendor report of PTC system or product safety-relevant failures, defective conditions, previously unidentified hazards, and recommended mitigation actions.	38 railroads	142 reports + 142 report copies.	16 hours + 8 hours	3,408
236.1029—PTC System Use: Report of en route failure	38 railroads	836 reports	96 hours	80,256
—Railroad submission to FRA of Order of Particular Applicability for approval.	38 railroads	1 order	3,200 hours	3,200
—Railroad notice to FRA regional office of planned disabling of PTC system at least 7 days in advance and a contemporaneous notice of unplanned temporary disabling.	38 railroads	76 notices + 114 unplanned notices.	10 hours	1,900
236.1031—Railroad Request for Expedited Certification (REC).	38 railroads	3 REC letters	160 hours	480
—Railroad PTC system request to FRA for grandfathering of previously approved train control system.	38 railroads	3 requests	1,600 hours	4,800
236.1035—Railroad request for approval to conduct field testing of uncertified PTC system with provision of required documents.	38 railroads	190 requests	800 hours	152,000
—Railroad request to FRA for regulatory relief from certain requirements of 49 part 236.	38 railroads	38 requests	320 hours	12,160
236.1037—Records Retention—Results of inspections and tests specified in PTCSP and PTCDP.	38 railroads	836 records	4 hours	3,344
—Records on testing, maintenance, or operation of PTC system.	38 railroads	18,240 records	30 minutes	9,120
—Railroad report of frequency of safety-relevant hazards exceeding threshold set forth in PTCSP or PTCDP.	38 railroads	4 reports	8 hours	32
—Railroad final report to FRA on results of analysis and countermeasures to reduce the frequency of safety-related hazards.	38 railroads	4 final reports	160 hours	640
236.1039—Railroad development and/or update of PTC Operations and Maintenance Manual (OMM).	38 railroads	38 OMM updates	250 hours	9,500
—Railroad identification of PTC safety-critical components.	38 railroads	114,000 I.D.s	1 hour	114,000
—OMM-designated PTC officer responsible for scheduled service interruptions.	38 railroads	76 designated officers	2 hours	152
236.1041—PTC Training & Qualification Program	38 railroads	38 programs	400 hours	15,200
236.1043—Regular & periodic evaluations of PTC training program.	38 railroads	38 regular & periodic evaluations.	720 hours	27,360
—Training records	38 railroads	560 records	10 minutes	93
236.1045—PTC Training of Office Control Personnel	38 railroads	32 trained personnel	20 hours	640
236.1047—PTC Training of Operating Personnel	38 railroads	7,600 trained personnel	3 hours	22,800

Total Estimated Annual Responses:
147,526.

Total Estimated Annual Burden:
2,728,528 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett Andrew Jortland,

Acting Deputy Chief Counsel.

[FR Doc. 2018–09909 Filed 5–9–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor

vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 25, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 2, 2018.
Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
9198-M	Interior Business Center	173.7(f)	To modify the special permit to authorize the incorporation of the "National Wildfire Coordination Group Standards" Handbook. (mode 4)
11054-M	WELKER, INC	173.301(f)(2), 173.302a(a)(1), 173.304a(a)(1), 173.304a(d)(3)(i), 173.201(c), 173.202(c), 173.203(c), 177.840(a)(1).	To modify the special permit to authorize a new high pressure sample cylinder. (modes 1, 2,3,4)
11379-M	TRW AUTOMOTIVE INC ..	173.301, 173.302a	To modify the special permit to authorize additional disposal options. (modes 1,2,3,4,5)
12532-M	CARLETON TECHNOLOGIES, INC.	173.302a(a)	To modify the special permit to clarify the proof testing pressure when a cylinder is inspected. (modes 1,2,4)
13301-M	UNITED TECHNOLOGIES CORPORATION.	172.200, 172.400, 172.300	To modify the special permit to authorize the transportation in commerce of certain hazardous materials for a distance of approximately 2400 feet without proper hazard communication. (mode 1)
16011-M	AMERICASE, INC	172.200, 172.300, 172.400, 172.500, 172.600, 172.700(a), 173.185(f).	To modify the special permit to authorize an additional packaging for shipping damaged or defective batteries. (modes 1,2,3)
16415-M	VOLKSWAGEN GROUP OF AMERICA, INC.	173.302a	To modify the special permit to authorize an additional 2.2 hazmat. (modes 1,3)
16514-M	WALGREEN CO.	172.301(c), 173.185(c)(3)(i).	To modify the special permit to harmonize the permit with HM-215N and to authorize rail transportation. (modes 1,2)

[FR Doc. 2018-09975 Filed 5-9-18; 8:45 am]

BILLING CODE 4909-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before June 11, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and

Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 3, 2018.
Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
6293-M	ATK Launch Systems Inc.	173.56(b)	To modify the special permit to authorize a change in water volume of a spent mixed acid by reducing the minimum water content to 16% by volume.
10631-M	Department of Defense (Military Surface Deployment & Distribution Command).	.....	To modify the permit to authorize an additional material.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
11110-M	United Parcel Service Co.	171.8, 175.75	To modify the special permit to authorize additional approved air carriers.
20283-M	LG CHEM	172.101(j)	To modify the special permit to authorize a variant design of an authorized battery.
20573-N	Siemens Gamesa Renewable Energy, Inc..	173.222(c)	To authorize the transportation in commerce of hazardous materials in non-DOT specification accumulators that meet the requirements of 49 CFR § 173.306(f)(3) except the accumulators exceed the maximum gas space, and non-DOT specification cylinders that are shipped as components of wind power generating equipment.
20581-N	Harms Pacific Transport Inc ...	180.417(a)(3)	To authorize the transportation in commerce of cargo tanks manufactured after August 31, 1995 for which the Manufacturer's Certificate of Compliance is missing.
20634-N	Business Integra Technology Solutions, Inc.	172.101(j), 173.27(b)(2)	To authorize the transportation in commerce of heat pipes containing anhydrous ammonia by cargo-only aircraft.
20636-N	DPC Enterprises	173.242	To authorize the one-time transportation in commerce of a MC331 cargo tank containing chlorine with a suspected leak between the pressure relief valve and the manway, which has been repaired temporarily using a Chlorine Institute Kit "C".

Special Permits Data—Denied

9847-M	FIBA Technologies, Inc .....	.....	To modify the special permit to authorize UE testing of approved Canadian cylinders.
10922-M	FIBA Technologies, Inc	173.302(a), 180.205, 180.207(d)(1), 172.302(c).	To modify the special permit to authorize UE testing of approved Canadian cylinders.
12607-M	FIBA Technologies, Inc	205, 209, 215	To modify the special permit to authorize UE testing on approved Canadian cylinders.
14453-M	FIBA Technologies, Inc	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to authorize the UE testing of approved Canadian cylinders.
14661-M	FIBA Technologies, Inc	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to authorize UE testing of approved Canadian cylinders.
20574-N	Rogue Valley Terminal Railroad Corporation.	174.14(a)	To authorize the transportation in commerce of LPG railcars that are not subject to the 48-hour expedited movement requirements.

Special Permits Data—Withdrawn

20626-N	Aerojet Rocketdyne, Inc	172.320(a), 173.51(a), 173.56(b).	To authorize the transportation in commerce of a one-time shipment of Class 1 materials that have not previously been approved.
20632-N	Clear View Enterprise LLC	177.834(h)	To authorize the discharge of certain hazardous materials for portable tanks and IBCs without unloading the packages from the vehicle.

[FR Doc. 2018-09974 Filed 5-9-18; 8:45 am]

BILLING CODE 4909-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 11, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of

comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in

accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 3, 2018.
Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data			
20635-N	FAR RESEARCH, INC	180.209(a)	To authorize the transportation in commerce of 4BW cylinders used exclusively for trimethylchlorosilane to be visual inspections per CGA C-6 in lieu of periodic hydrostatic testing. (modes 1, 2, 3).
20637-N	LG CHEM	172.101(j)	To authorize the transportation in commerce of lithium ion batteries in excess of 35 kg by cargo-only aircraft. (mode 4).
20638-N	BALL AEROSOL AND SPECIALTY CONTAINER INC.	173.306(a)(3), 178.33-7(a), 178.33a-7(a), 178.33c-1.	To authorize the manufacture, mark, sale, and use of non-DOT specification receptacles with reduced wall thickness. (modes 1, 2, 3, 4, 5).
20639-N	ICC THE COMPLIANCE CENTER INC.	172.200, 172.300, 172.400, 172.700(a), 173.185(f).	To authorize the manufacture, mark, sale, and use of alternative packaging for the transport of damaged, defective, and recalled batteries. (modes 1, 2, 3).
20640-N	Insitu Inc	173.220(d)	To authorize the transportation in commerce of vehicles containing prototype lithium batteries via cargo-only aircraft. (mode 4).
20641-N	THERMO MF PHYSICS LLC.	173.304a(a)(1)	To authorize the transportation in commerce of non-DOT specification cylinders containing sulfur hexafluoride gas. (modes 1, 3, 4, 5).
20644-N	229 CRI CRITERION INC	172.102(c)(2)	To authorize the transportation in commerce of 50G large packagings containing solid environmentally hazardous substances via air. (modes 4, 5).
20645-N	WALMART INC.	173.159a(c)(2), 173.185(c)(1)(iii), 173.185(c)(1)(iv), 173.185(c)(1)(v), 173.185(c)(3)	To authorize the transportation in commerce of lithium batteries with alternative hazard communication. (modes 1, 2).
20646-N	OMNI TANKER PTY. LTD	107.503(b), 107.503(c), 172.102(c)(3), 172.203(a), 173.241, 173.242, 173.243, 178.348-1, 178.345-1, 178.347-1, 180.405, 180.413(d).	To authorize the manufacture, mark, sale, and use of non-DOT specification portable tanks. (mode 1).
20650-N	ONYX ENVIRONMENTAL SERVICES LLC.	173.21(b), 173.51, 173.54(a), 173.56(b) ..	To authorize the one-time, one-way transportation in commerce of an unapproved cartridge, power device. (mode 1).
20651-N	ATIEVA USA, INC	172.101(j)	To authorize the transportation in commerce of lithium ion batteries in excess of 35 kg by cargo-only aircraft. (mode 4).
20652-N	AMETEK AMERON, LLC ..	173.302a(a)(1)	To authorize the manufacture, mark, sale, and use of non-DOT specification cylinders. (modes 1, 2, 3, 4, 5).
20653-N	JOHNSON CONTROLS, INC.	173.185(b)	To authorize the transportation in commerce of lithium ion batteries in alternative packaging. (modes 1, 2, 3).
20654-N	JOHNSON CONTROLS ADVANCED POWER SOLUTIONS, LLC.	173.185(a)	To authorize the transportation in commerce of prototype and low production lithium ion batteries via cargo-only aircraft. (mode 4).



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Part II

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Placement of beta-Hydroxythiofentanyl
Into Schedule I; Proposed Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-484]

**Schedules of Controlled Substances:
Placement of beta-Hydroxythiofentanyl
Into Schedule I****AGENCY:** Drug Enforcement
Administration, Department of Justice.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing beta-hydroxythiofentanyl (*N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropanamide) also known as *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]4-piperidinyl]*N*-phenylpropanamide including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers, in schedule I of the Controlled Substances Act. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle beta-hydroxythiofentanyl.

DATES: Comments must be submitted electronically or postmarked on or before June 11, 2018.

Interested persons may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before June 11, 2018.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference “Docket No. DEA-484” on all electronic and written correspondence, including any attachments.

• **Electronic comments:** The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to [http://](http://www.regulations.gov)

www.regulations.gov and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

• **Paper comments:** Paper comments that duplicate the electronic submission are not necessary. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

• **Hearing requests:** All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should be sent to: Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

SUPPLEMENTARY INFORMATION:**Posting of Public Comments**

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You

must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to <http://www.regulations.gov> may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at <http://www.regulations.gov> for easy reference.

**Request for Hearing or Waiver of
Participation in a Hearing**

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking “on the record after opportunity for a hearing.” Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Such requests or notices must conform to the requirements of 21 CFR 1308.44(a) or (b), and 1316.47 or 1316.48, as applicable, and include a statement of the person’s interests in the proposed scheduling action, whether the person is adversely affected or aggrieved, and the objections or issues, if any, concerning which the person desires to be heard at a hearing. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and may include a written statement regarding the interested person’s position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of a hearing held in relation to this rulemaking are restricted to: “(A) find[ing] that such drug or other substance has a potential for abuse, and

(B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *.” All requests for hearing and waivers of participation must be sent to the DEA using the address information provided above.

Legal Authority

The Controlled Substances Act (CSA) provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS),¹ or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action is supported by a recommendation from the Assistant Secretary for Health of the HHS (Assistant Secretary) and an evaluation of all other relevant data by the DEA. If finalized, this action would continue² to impose the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles or proposes to handle beta-hydroxythiofentanyl.

Background

On May 12, 2016, the DEA published a final order in the **Federal Register** amending 21 CFR 1308.11(h) to temporarily place beta-hydroxythiofentanyl (*N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropionamide in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 81 FR 29492. That temporary scheduling order was effective on the date of publication, and was based on findings by the Acting Administrator of the DEA (Acting Administrator) that the temporary scheduling of beta-hydroxythiofentanyl was necessary to avoid an imminent hazard to public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA, 21 U.S.C. 811(h)(2), requires that the temporary control of this substance expire two

years from the effective date of the scheduling order, which was May 12, 2016. However, the CSA also provides that during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling of that substance could be extended for up to one year.

Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of HHS,³ or on the petition of any interested party. An extension of the existing temporary order is being ordered by the Acting Administrator in a separate action, and is published elsewhere in this issue of the **Federal Register**.

The Acting Administrator, on his own motion pursuant to 21 U.S.C. 811(a), is initiating proceedings under 21 U.S.C. 811(a)(1) to permanently schedule beta-hydroxythiofentanyl. The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for beta-hydroxythiofentanyl. On December 8, 2016, the Acting Administrator submitted a request to the Assistant Secretary to provide the DEA with a scientific and medical evaluation of available information and a scheduling recommendation for butyryl fentanyl and beta-hydroxythiofentanyl, in accordance with 21 U.S.C. 811(b) and (c). In a letter dated November 1, 2017, DEA notified HHS that it no longer required a scientific and medical evaluation for butyryl fentanyl because the Commission on Narcotic Drugs (CND), at its 60th session, added butyryl fentanyl to Schedule I of the Single Convention on Narcotic Drugs, 1961. On April 20, 2018, the DEA published a final scheduling order for butyryl fentanyl (83 FR 17486) to meet international treaty obligations pursuant to 21 U.S.C. 811(d)(1).

Upon evaluating the scientific and medical evidence, on April 27, 2018, the Assistant Secretary submitted to the Acting Administrator HHS's scientific and medical evaluation and scheduling recommendation for beta-hydroxythiofentanyl. Upon receipt of the scientific and medical evaluation and scheduling recommendation from the HHS, the DEA reviewed the

documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of beta-hydroxythiofentanyl in accordance with 21 U.S.C. 811(c).

Proposed Determination To Schedule beta-Hydroxythiofentanyl

As discussed in the background section, the Acting Administrator is initiating proceedings, pursuant to 21 U.S.C. 811(a)(1), to add beta-hydroxythiofentanyl permanently to schedule I. The DEA has reviewed the scientific and medical evaluations and scheduling recommendation, received from HHS, and all other relevant data and conducted its own eight-factor analysis of the abuse potential of beta-hydroxythiofentanyl pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in its proposed scheduling action. Please note that both the DEA 8-Factor and HHS 8-Factor analyses and the Assistant Secretary's April 27, 2018, letter, are available in their entirety under the tab “Supporting Documents” of the public docket for this action at <http://www.regulations.gov> under Docket Number “DEA-484.”

1. *The Drug's Actual or Relative Potential for Abuse:* The term “abuse” is not defined in the CSA. However, the legislative history of the CSA suggests that the DEA consider the following criteria when determining whether a particular drug or substance has a potential for abuse:⁴

(a) *There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or*

(b) *There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or*

(c) *Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or*

(d) *The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to*

¹ As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

² beta-Hydroxythiofentanyl is currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(b). 81 FR 29492, May 12, 2016.

³ Because the Secretary of HHS has delegated to the Assistant Secretary the authority to make domestic drug scheduling recommendations, for purposes of this proposed rulemaking, all subsequent references to “Secretary” have been replaced with “Assistant Secretary.”

⁴ Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91-1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.A.N. 4566, 4603.

the health of the user or to the safety of the community.

The abuse potential of beta-hydroxythiofentanyl is associated with its pharmacological similarity to other schedule I and II mu-opioid receptor agonist substances which have a high potential for abuse. Similar to morphine, fentanyl and several schedule I opioid substances that are structurally related to fentanyl, beta-hydroxythiofentanyl has been shown to bind and act as a μ -opioid receptor agonist.

beta-Hydroxythiofentanyl has no approved medical use in the United States and has been encountered on the illicit drug market. The use of beta-hydroxythiofentanyl has been associated with adverse outcomes to include death. Because beta-hydroxythiofentanyl is not an approved drug product, a practitioner may not legally prescribe it, and this substance cannot be dispensed to an individual. Therefore, the use of beta-hydroxythiofentanyl is without medical advice, and accordingly, leads to the conclusion that beta-hydroxythiofentanyl is abused for its opioidergic properties. There are no legitimate drug channels for beta-hydroxythiofentanyl as a marketed drug product but it's available for purchase from legitimate chemical companies because it is used in scientific research. However, despite the limited legitimate use of this substance, reports from public health and law enforcement communicate that beta-hydroxythiofentanyl is being abused and taken in amounts sufficient to create a hazard to an individual's health. This is evidenced by the positive toxicological identification of beta-hydroxythiofentanyl in several (n=25) overdose deaths. Data from forensic databases can be used as an indicator of illicit activity with drugs and abuse⁵ within the United States. According to the National Forensic Laboratory Information System (NFLIS)⁶ which collects and analyzes drug exhibits submitted to Federal, State and Local forensic laboratories, there were ten reports (from Florida) of beta-hydroxythiofentanyl within this database in 2015. Consequently, the

positive identification of beta-hydroxythiofentanyl in law enforcement encounters and toxicological screenings of overdose deaths indicates that this substance is being abused, and thus poses safety hazards to the health of users.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* beta-Hydroxythiofentanyl is pharmacologically similar to other schedule I and schedule II mu-opioid receptor agonist substances. The abuse potential (assessed by drug discriminative study and self-administration study) of beta-hydroxythiofentanyl has not been studied in non-clinical or clinical studies, however the non-clinical and clinical studies conducted on abuse potential of mu-opioid receptor agonists such as morphine and fentanyl indicate that these drugs share discriminative stimulus effects and that these drugs have reinforcing properties. Similar to schedule I and II opioid analgesics, beta-hydroxythiofentanyl binds to and activates the mu-opioid receptor. Additionally, behavioral studies in animals demonstrate that similar to fentanyl and morphine, beta-hydroxythiofentanyl produces analgesic effect. Pre-treatment with naltrexone, an opioid antagonist, attenuated analgesic effects of beta-hydroxythiofentanyl, fentanyl and morphine. These data indicate that beta-hydroxythiofentanyl is a CNS active mu-opioid receptor agonist that is about 10 times more potent than morphine. Thus, it is concluded from *in vitro* and *in vivo* pharmacological studies that effects of beta-hydroxythiofentanyl are similar to that of fentanyl and morphine and is mediated by mu-opioid receptor agonism.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* beta-Hydroxythiofentanyl is a synthetic opioid of the 4-anilidopiperidine structural class which includes fentanyl and thiofentanyl. The chemical structure of beta-hydroxythiofentanyl differs in substitution from fentanyl at the piperidine nitrogen atom. Fentanyl contains a phenyl ethyl group at the piperidine nitrogen atom whereas beta-hydroxythiofentanyl is substituted with a beta-hydroxy 2-thienyl ethyl group. Also, beta-hydroxythiofentanyl structurally differs from the schedule I synthetic opioid, thiofentanyl, by the addition of a hydroxyl group at the beta-position of the thienyl ethyl group. Data from postmortem toxicological analysis show that a fentanyl metabolite, norfentanyl, was detected in one case that involved beta-hydroxythiofentanyl.

No study has been undertaken to evaluate the efficacy, toxicology, and safety of beta-hydroxythiofentanyl in humans. It can be inferred from medical examiner reports and data obtained from animal studies that beta-hydroxythiofentanyl has sufficient distribution to the brain to produce depressant effects similar to that of mu opioid receptor agonists.

There is no FDA approved marketing application for a drug product containing beta-hydroxythiofentanyl for any therapeutic indication in the United States. Moreover, there are no clinical studies or petitioners of which has claimed an accepted medical use in the United States for this substance.

4. *Its History and Current Pattern of Abuse:* beta-Hydroxythiofentanyl was first encountered as a drug of abuse in 1985. Evidence suggests that the pattern of abuse of beta-hydroxythiofentanyl parallels that of prescription opioid analgesics. Beta-hydroxythiofentanyl, like other substances structurally related to fentanyl is disguised as a "legal" alternative to fentanyl. There is evidence that beta-hydroxythiofentanyl is ingested with other substances. beta-Hydroxythiofentanyl has been identified in pills, presumably intended for sale on the illicit market.

5. *The Scope, Duration, and Significance of Abuse:* beta-Hydroxythiofentanyl, similar to other substances structurally related to fentanyl, is a recreational drug. The recreational use of beta-hydroxythiofentanyl and other substances related to fentanyl continues to be of significant concern in the United States. These substances are distributed to users, often with unpredictable outcomes. Because users of beta-hydroxythiofentanyl and its associated drug products are likely to obtain these substances through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to abusers. The significance of abuse for beta-hydroxythiofentanyl is reflected in the positive identification of this substance in several post-mortem cases. Though the scope and duration of abuse data for beta-hydroxythiofentanyl were restricted to Florida in 2015, there is the possibility the number of fatalities were underreported because the capabilities of medical examiner offices across the country vary and many are unable to detect beta-hydroxythiofentanyl in their toxicological screens. Evidence that beta-hydroxythiofentanyl is being abused and trafficked is confirmed by law enforcement encounters. NFLIS contained ten reports of beta-

⁵ While law enforcement data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See 76 FR 77330, 77332, Dec. 12, 2011.

⁶ NFLIS is a DEA program and a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by state and local forensic laboratories in the United States. The NFLIS database also contains Federal data from U.S. Customs and Border Protection (CBP). NFLIS only includes drug chemistry results from completed analyses.

hydroxythiofentanyl from Florida from State, local, and other forensic laboratories. These data demonstrate that beta-hydroxythiofentanyl has significance of abuse that supports its scheduling under the CSA.

Currently the United States is in the midst of a prescription and illicit opioid abuse epidemic. According to NFLIS, in the last few years, there has been marked increase in the encounters of synthetic opioids such as fentanyl and substances that are structurally related to fentanyl. In parallel to this increase in law enforcement encounters, there has been a corresponding marked increase in deaths related to synthetic opioids. beta-Hydroxythiofentanyl is a synthetic opioid that is structurally related to fentanyl. Therefore, the issue of fentanyl and substances structurally related to fentanyl abuse has become a major public health problem.

6. *What, if Any, Risk There is to the Public Health:* Available evidence on the overall public health risks associated with the use of beta-hydroxythiofentanyl is reflected by the several cases of fatalities (n=25) associated with its abuse. In addition to the recognized harm from ingesting beta-hydroxythiofentanyl, abusers risk harm when they obtain these drugs through unknown sources. Since beta-hydroxythiofentanyl shares a similar pharmacological profile with fentanyl and other opioid analgesics, individuals who abuse this substance are likely at risk of developing substance use disorder, overdose and death similar to other opioid analgesics. Further, poly-substance abuse has been identified in fatalities involving fentanyl and other related opioids. In reported fatality cases involving beta-hydroxythiofentanyl, other substances such as cocaine, ethanol, other opioids, cannabinoids, benzodiazepines, and stimulants were also co-identified in the toxicological screening. Evidence suggests that products containing fentanyl related substances often do not bear accurate information regarding their contents and if they do, they may not contain the expected active ingredients or identify the health risks and potential hazards associated with these products. Thus, the limited knowledge about product contents, its purity and lack of information about its effects may pose another level of risk to users. Taken together, evidence posits that individuals experimenting with substances with unknown potency are at high risk of adverse health outcomes.

7. *Its Psychic or Physiological Dependence Liability:* There are no pre-clinical and clinical studies that have evaluated the dependence potential of

beta-hydroxythiofentanyl. beta-Hydroxythiofentanyl is a mu-opioid receptor agonist, and discontinuation of the use of mu-opioid receptor agonists, such as fentanyl and morphine, is well known to cause withdrawal indicative of physical dependence. Opioid withdrawal includes nausea and vomiting, depression, agitation, anxiety, craving, sweats, hypertension, diarrhea, and fever.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* beta-Hydroxythiofentanyl is not considered an immediate precursor of any controlled substance of the CSA as defined by 21 U.S.C. 802(23).

Conclusion: After considering the scientific and medical evaluation conducted by the HHS, the HHS's recommendation, and the DEA's own eight-factor analysis, the DEA finds that the facts and all relevant data constitute substantial evidence of the potential for abuse of beta-hydroxythiofentanyl. As such, the DEA hereby proposes to permanently schedule beta-hydroxythiofentanyl as a schedule I controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Acting Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

1. beta-Hydroxythiofentanyl has a high potential for abuse;
 2. beta-Hydroxythiofentanyl has no currently accepted medical use in treatment in the United States; and
 3. There is a lack of accepted safety for use of beta-hydroxythiofentanyl under medical supervision.
- Based on these findings, the Acting Administrator of the DEA concludes that beta-hydroxythiofentanyl (N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide), including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers, warrant continued control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

Requirements for Handling beta-Hydroxythiofentanyl

If this rule is finalized as proposed, beta-hydroxythiofentanyl would

continue⁷ to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) beta-hydroxythiofentanyl, or who desires to handle beta-hydroxythiofentanyl, is required to be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Security.* beta-Hydroxythiofentanyl is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and in accordance with 21 CFR 1301.71–1301.93.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of beta-hydroxythiofentanyl must be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

4. *Quota.* Only registered manufacturers are permitted to manufacture beta-hydroxythiofentanyl in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. *Inventory.* Any person registered with the DEA to handle beta-hydroxythiofentanyl must have an initial inventory of all stocks of controlled substances (including beta-hydroxythiofentanyl) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including beta-hydroxythiofentanyl) on hand every two years pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant is required to maintain records and submit reports with respect to beta-hydroxythiofentanyl, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes beta-

⁷ beta-Hydroxythiofentanyl is currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h). 81 FR 29492, May 12, 2016.

hydroxythiofentanyl is required to comply with the order form requirements, pursuant to 21 U.S.C. 828, and 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of beta-hydroxythiofentanyl must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving beta-hydroxythiofentanyl not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and could subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures done “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

This proposed rule does not meet the definition of an Executive Order 13771 regulatory action, and the repeal and cost offset requirements of Executive Order 13771 have not been triggered. OMB has previously determined that formal rulemaking actions concerning the scheduling of controlled substances, such as this rule, are not significant regulatory actions under Section 3(f) of Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in

sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not 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.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this proposed rule and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. On May 12, 2016, the DEA published a final order to temporarily place beta-hydroxythiofentanyl in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The DEA estimates that all entities handling or planning to handle beta-hydroxythiofentanyl have already established and implemented the systems and processes required to handle this substances. There are currently 15 registrations authorized to handle beta-hydroxythiofentanyl, as

well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. These 15 registrations represent 13 entities, of which 10 are small entities. Therefore, the DEA estimates 10 small entities are affected by this proposed rule.

A review of the 15 registrations indicates that all entities that currently handle beta-hydroxythiofentanyl also handle other schedule I controlled substances, and have established and implemented (or maintain) the systems and processes required to handle beta-hydroxythiofentanyl. Therefore, the DEA anticipates that this proposed rule will impose minimal or no economic impact on any affected entities; and thus, will not have a significant economic impact on any of the 10 affected small entities. Therefore, the DEA has concluded that this proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, the DEA has determined and certifies that this action would not result in 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 for inflation) in any one year * * *.” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:

- a. Redesignate paragraphs (b)(15) through (60) as (b)(16) through (61); and
- b. Add new paragraph (b)(15);
- c. Remove and reserve paragraph (h)(3).

The addition to read as follows:

§ 1308.11 Schedule I.

* * * * *

(b) * * *

(15) *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: beta-Hydroxythiofentanyl) (9836)

* * * * *

Dated: May 7, 2018.

Robert W. Patterson,
Acting Administrator.

[FR Doc. 2018-10008 Filed 5-9-18; 8:45 am]

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Part III

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Extension of Temporary Placement of beta-Hydroxythiofentanyl in Schedule I of the Controlled Substances Act; Temporary Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-484]

Schedules of Controlled Substances: Extension of Temporary Placement of beta-Hydroxythiofentanyl in Schedule I of the Controlled Substances Act**AGENCY:** Drug Enforcement Administration, Department of Justice.**ACTION:** Temporary rule; temporary scheduling order; extension.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to extend the temporary schedule I status of beta-hydroxythiofentanyl (*N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropanamide) also known as *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-*N*-phenylpropanamide including its isomers, esters, ethers, salts and salts of isomers, esters and ethers. The schedule I status of beta-hydroxythiofentanyl currently is in effect through May 12, 2018. This temporary order will extend the temporary scheduling of beta-hydroxythiofentanyl for one year, or until the permanent scheduling action for this substance is completed, whichever occurs first.

DATES: This temporary scheduling order, which extends the final order (81 FR 29492, May 12, 2016), is effective May 12, 2018 and expires on May 12, 2019. If this order is made permanent, the DEA will publish a document in the **Federal Register** on or before May 12, 2019.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

SUPPLEMENTARY INFORMATION:**Background and Legal Authority**

On May 12, 2016, the Acting Administrator of the Drug Enforcement Administration (DEA) published a final order in the **Federal Register** (81 FR 29492) temporarily placing beta-hydroxythiofentanyl (*N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropanamide) in schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). That final order was effective on the date of publication, and was based on findings

by the Acting Administrator of the DEA that the temporary scheduling of beta-hydroxythiofentanyl was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA, 21 U.S.C. 811(h)(2), requires that the temporary control of this substance expires two years from the effective date of the scheduling order, or on May 12, 2018. However, the CSA also provides that during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling¹ of that substance could be extended for up to one year. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services,² or on the petition of any interested party.

The Acting Administrator of the DEA, on his own motion pursuant to 21 U.S.C. 811(a), has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule beta-hydroxythiofentanyl. The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for this substance. On December 8, 2016, the DEA submitted a request to the HHS to provide the DEA with a scientific and medical evaluation of available information and a scheduling recommendation for butyryl fentanyl and beta-hydroxythiofentanyl, and in accordance with 21 U.S.C. 811(b) and (c). In a letter dated November 1, 2017, DEA notified HHS that it no longer required a scientific and medical evaluation for butyryl fentanyl because the Commission on Narcotic Drugs (CND), at its 60th session, added butyryl fentanyl to Schedule I of the Single Convention on Narcotic Drugs, 1961. On April 20, 2018, the DEA published a final scheduling order for butyryl fentanyl (83 FR17486) to meet

¹ Though DEA has used the term “final order” with respect to temporary scheduling orders in the past, this notice adheres to the statutory language of 21 U.S.C. 811(h), which refers to a “temporary scheduling order.” No substantive change is intended.

² Because the Secretary of the Department of Health and Human Services has delegated to the Assistant Secretary for Health of the Department of Health and Human Services the authority to make domestic drug scheduling recommendations, for purposes of this temporary order, all subsequent references to “Secretary” have been replaced with “Assistant Secretary.”

international treaty obligations pursuant to 21 U.S.C. 811(d)(1).

Upon evaluating the scientific and medical evidence, on April 27, 2018, the HHS submitted to the Acting Administrator of the DEA its scientific and medical evaluation and scheduling recommendation for beta-hydroxythiofentanyl. Upon receipt of the scientific and medical evaluation and scheduling recommendation from the HHS, the DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of beta-hydroxythiofentanyl in accordance with 21 U.S.C. 811(c). The DEA published a notice of proposed rulemaking for the placement of beta-hydroxythiofentanyl in schedule I elsewhere in this issue of the **Federal Register**. If this order is made permanent, the DEA will publish a final rule in the **Federal Register**.

Pursuant to 21 U.S.C. 811(h)(2), the Acting Administrator of the DEA orders that the temporary scheduling of beta-hydroxythiofentanyl, including its isomers, esters and ethers and salts of isomers, esters, ethers, be extended for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

In accordance with this temporary scheduling order, the schedule I requirements for handling beta-hydroxythiofentanyl, including its isomers, esters and ethers and salts of isomers, esters, ethers, will remain in effect for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

Regulatory Matters

The CSA provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h). The Attorney General may, by order, schedule a substance in schedule I on a temporary basis. *Id.* 21 U.S.C. 811(h) also provides that the temporary scheduling of a substance shall expire at the end of two years from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings to permanently schedule the substance, extend the temporary scheduling for up to one year.

To the extent that 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued and extended, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this

extension of the temporary scheduling action. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety. Further, the DEA believes that this order extending the temporary scheduling action is not a “rule” as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the CRA, “any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines.” 5 U.S.C. 808(2). It is in the public interest to maintain the temporary placement of beta-hydroxythiofentanyl in schedule I because it poses a public health risk. The temporary scheduling action was taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), temporary scheduling orders are not subject to notice and comment

rulemaking procedures. The DEA understands that the CSA frames temporary scheduling actions as orders rather than rules to ensure that the process moves swiftly, and this extension of the temporary scheduling order continues to serve that purpose. For the same reasons that underlie 21 U.S.C. 811(h), that is, the need to place this substance in schedule I because it poses an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of this extension of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order extending the temporary scheduling order shall take effect immediately upon its publication. The DEA has submitted a copy of this temporary order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

Dated: May 7, 2018.

Robert W. Patterson,
Acting Administrator.

[FR Doc. 2018–10009 Filed 5–9–18; 8:45 am]

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Part IV

The President

Notice of May 9, 2018—Continuation of the National Emergency With Respect to the Actions of the Government of Syria

Presidential Documents

Title 3—

Notice of May 9, 2018

The President

Continuation of the National Emergency With Respect to the Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, Executive Order 13338 authorized the blocking of property of certain persons and prohibited the exportation or reexportation of certain goods to Syria. The national emergency was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012.

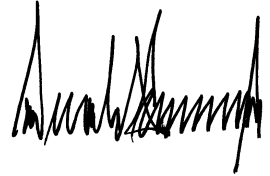
The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq.

The regime's brutality and repression of the Syrian people, who have been calling for freedom and a representative government, not only endangers the Syrian people themselves, but also generates instability throughout the region. The Syrian regime's actions and policies, including with respect to chemical weapons, supporting terrorist organizations, and obstructing the Lebanese government's ability to function effectively, continue to foster the rise of extremism and sectarianism and pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared on May 11, 2004, and the measures to deal with that emergency adopted on that date in Executive Order 13338; on April 25, 2006, in Executive Order 13399; on February 13, 2008, in Executive Order 13460; on April 29, 2011, in Executive Order 13572; on May 18, 2011, in Executive Order 13573; on August 17, 2011, in Executive Order 13582; on April 22, 2012, in Executive Order 13606; and on May 1, 2012, in Executive Order 13608, must continue in effect beyond May 11, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to the actions of the Government of Syria.

In addition, the United States condemns the Assad regime's use of brutal violence and human rights abuses and calls on the Assad regime to stop its violence against the Syrian people, uphold the Cessation of Hostilities, enable the delivery of humanitarian assistance, and allow a political transition in Syria that will forge a credible path to a future of greater freedom, democracy, opportunity, and justice.

The United States will consider changes in the composition, policies, and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 9, 2018.

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Federal Register

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