AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 83 Wednesday,
No. 148 August 1, 2018

Pages 37421–37734

OFFICE OF THE FEDERAL REGISTER

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

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

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

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

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

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

How To Cite This Publication: Use the volume number and the page number. Example: 83 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 83, No. 148

Wednesday, August 1, 2018

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Firearms Act Division and Firearms and Explosives Services Division Customer Service Survey, 37520

Animal and Plant Health Inspection Service
NOTICES
Environmental Assessments; Availability, etc.:
Texas A and M AgriLife Research; Cotton Genetically Engineered for Ultra-Low Gossypol Levels in Cottonseed, 37459–37460

Children and Families Administration
NOTICES
Proposed Model Family Foster Home Licensing Standards, 37495–37500

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37461–37462

Defense Department
See Navy Department
RULES
Provision of Early Intervention Services to Eligible Infants and Toddlers With Disabilities and Their Families, and Special Education Children With Disabilities Within Section 6 School Arrangements, 37433

Drug Enforcement Administration
NOTICES
Bulk Manufacturer of Controlled Substances; Applications:
Chemtos, LLC, 37520–37524
Importer of Controlled Substances; Applications:
Anderson Brecon, Inc., 37525–37526
Cody Laboratories, Inc., 37524–37525
Galephar Pharmaceutical Research, Inc., 37525
Ultra Scientific, Inc., 37525

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Biomass Research and Development Technical Advisory Committee, 37490
Environmental Management Site-Specific Advisory Board, Oak Ridge, 37489–37490
State Energy Advisory Board; Teleconference, 37488
Requests for Information:
National Offshore Wind Energy R and D Test Facilities, 37488–37489
National Wind Technology Center Facility and Infrastructure Investments, 37489

Environmental Protection Agency
RULES
Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms and Release Notification Requirements; Vacatur Response, 37444–37446
Air Quality State Implementation Plans; Approvals and Promulgations:
Connecticut; Infrastructure State Implementation Plan Requirements; Prevention of Significant Deterioration Permit Program Revisions, 37437–37440
Vermont; Infrastructure Requirement for 2010 Sulfur Dioxide National Ambient Air Quality Standard, 37435–37437
Wisconsin; Modification of Greenhouse Gas Language, 37434–37435
Significant New Use Rules on Certain Chemical Substances, 37702–37733
Tolerance Exemptions:
Titanium dioxide, 37440–37443
PROPOSED RULES
Significant New Use Rules on Certain Chemical Substances, 37455

Federal Aviation Administration
RULES
Amendment of Class D Airspace:
Erie, PA, 37421–37422
Amendment of Class E Airspace:
Lyons, KS, 37422–37423

Federal Energy Regulatory Commission
PROPOSED RULES
Interlocking Officers and Directors; Requirements for Applicants and Holders, 37450–37455
NOTICES
Applications:
D'Lo Gas Storage, LLC, 37493–37494
Gulf South Pipeline Co., LP, 37491
Indiana Michigan Power Co., 37491–37493
Environmental Impact Statements; Availability, etc.:
Rugraw, LLC; Lassen Lodge Hydroelectric Project, 37490–37491
Requests Under Blanket Authorizations:
Florida Gas Transmission Co., LLC, 37495
Staff Attendances, 37493
Staff Review of Enforcement Programs:
North American Electric Reliability Corp., 37494–37495

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37606–37612

Fiscal Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Claim for Lost, Stolen, or Destroyed U.S. Savings Bonds and Supplemental Statement for U.S. Securities, 37615
Request by Fiduciary for Distribution of United States Treasury Securities, 37615–37616

Food and Drug Administration
NOTICES
Outsourcing Facility Fee Rates for Fiscal Year 2019, 37500–37504
Prescription Drug User Fee Rates for Fiscal Year 2019, 37504–37507

Foreign–Trade Zones Board
NOTICES
Subzone Applications:
Liquilux Gas Corp., Ponce, PR, 37462–37463

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Idaho; Nevada; Wyoming; and Wyoming/Colorado Amendments to Land Management Plans for Greater Sage-Grouse Conservation, 37460–37461

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See U.S. Customs and Border Protection
NOTICES
Meetings:
President's National Security Telecommunications Advisory Committee, 37511

Industry and Security Bureau
RULES
Addition of Certain Entities; and Modification of Entry on Entity List, 37423–37433

Interior Department
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
NOTICES
Quarterly Publication of Individuals, Who Have Chosen To Expatriate, 37616–37631

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Advance Notification of Sunset Review, 37467–37468
Initiation of Five-Year (Sunset) Reviews, 37463–37464
Polyester Staple Fiber From Republic of Korea: 2017–2018 Review; Rescission, 37471–37472
Ripe Olives From Spain, 37465–37466, 37469–37471
Stainless Steel Flanges From the People's Republic of China, 37468–37469
Steel Propane Cylinders From the People's Republic of China, 37463
Export Trade Certificates of Review:
Ginseng Board of Wisconsin, Inc., 37466–37467

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Clidinium Bromide and Products Containing Same; Termination of Investigation, 37514
Certain Pasta From Italy and Turkey, 37517–37520
Certain Programmable Logic Controller, Components Thereof, and Products Containing Same, 37516
Certain Subsea Telecommunication Systems and Components Thereof, 37516–37517
Certain Water Filters and Components Thereof, 37514–37515
Meetings; Sunshine Act, 37515

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37526–37527

Land Management Bureau
NOTICES
Public Land Orders:
Partial Withdrawal Revocation, Power Site Classification No. 361 and Modification of Public Land Order No. 7448; Colorado, 37512–37513
Public Lands; Temporary Closures:
Washoe County, NV, 37512
Realty Actions:
Application for Conveyance of Federally Owned Mineral Interests in Pima County, AZ, 37511–37512

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37614
Requests for Administrative Waivers of the Coastwise Trade Laws:
TEDDY BEAR, 37613
Vessel LA DOLCE VITA, 37614–37615
Vessel NINE LIVES, 37613–37614

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Adjustments to 2018 North and South Atlantic Swordfish Quotas, 37446–37448
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Ocean Perch in Bering Sea and Aleutian Islands Management Area, 37448–37449
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Permit Renewal Applications, 37455–37458
Taking and Importing Marine Mammals:
Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries Research, 37638–37699

NOTICES
Magnuson-Stevens Act Provisions:
General Provisions for Domestic Fisheries; Monkfish Research Set-Aside Exempted Fishing Permit Adjustment, 37472–37473
Takes of Marine Mammals Incidental to Specified Activities:
Ketchikan Berth IV Expansion Project, 37473–37487

Navy Department
RULES
Availability of Department of Navy Records and Publication of Department of Navy Documents Affecting Public, 37433

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Domestic Licensing of Source Material, 37537–37538
National Source Tracking Transaction Report, 37535–37536
Request for Taxpayer Identification Number, 37528–37529
Standards for Protection Against Radiation, 37527–37528
Environmental Assessments; Availability, etc.:
American Centrifuge Operating, LCC, Lead Cascade Facility, 37530–37532
Exemptions:
LaCrosseSolutions, LLC; Dairyland Power Coop. La Crosse Boiling Water Reactor, 37532–37535
Interim Staff Guidance:
Decommissioning Funding Plans for Materials Licensees, 37529–37530
License Renewals; Applications:
Exelon Generation Co., LLC; Peach Bottom Atomic Power Station Units 2 and 3, 37529

Patent and Trademark Office
NOTICES
Hearings:
Patent Public Advisory Committee, 37487–37488

Reclamation Bureau
NOTICES
Meetings:
Glen Canyon Dam Adaptive Management Work Group, 37513

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Bats BZX Exchange, Inc., 37579–37605
Depository Trust Co., 37541–37544
Financial Industry Regulatory Authority, Inc., 37544–37545
Municipal Securities Rulemaking Board, 37538–37541
Nasdaq Stock Market, LLC, 37569–37570
New York Stock Exchange, LLC, 37548–37552
NYSE American, LLC, 37556–37559
NYSE Arca, Inc., 37545–37548, 37560–37569
NYSE National, Inc., 37552–37556
Options Clearing Corp., 37570–37579

Small Business Administration
NOTICES
Conflicts of Interest; Exemptions:
Ironwood Mezzanine Fund IV–A, LP, 37605
Stellus Capital SBIC, LP, 37605

Substance Abuse and Mental Health Services Administration
NOTICES
Certified Laboratories and Instrumented Initial Testing Facilities:
Urine Drug Testing for Federal Agencies, 37508–37509

Surface Transportation Board
NOTICES
Changes in Operator Exemptions:
St. Paul and Pacific Railroad Co., LLC; Santa Cruz and Monterey Bay Railway Co., 37606
Continuances in Control; Exemptions:
Progressive Rail Inc.; St. Paul and Pacific Railroad Co., LLC, 37605–37606

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration

Treasury Department
See Fiscal Service
See Internal Revenue Service
See United States Mint
NOTICES
Privacy Act; Systems of Records, 37631–37634

U.S. Customs and Border Protection
NOTICES
COBRA Fees To Be Adjusted for Inflation in Fiscal Year 2019, 37509–37511

United States Mint
NOTICES
Pricing for Presidential Silver Medals Program, 37634–37635

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Description of Materials, 37636
Meetings:
Research Advisory Committee on Gulf War Veterans' Illnesses, 37635–37636
Requests for Nominations:
Appointment to Geriatrics and Gerontology Advisory Committee, 37635

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 37638–37699

Part III
Environmental Protection Agency, 37702–37733

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
71 (2 documents) 37421, 37422

15 CFR
744.....37423

18 CFR

Proposed Rules:
45.....37450
46.....37450

32 CFR
80.....37433
701.....37433

40 CFR
9.....37702
52 (3 documents) 37434, 37435, 37437
180.....37440
302.....37444
355.....37444
721.....37702

Proposed Rules:
721.....37455

50 CFR
635.....37446
679.....37448

Proposed Rules:
219.....37638
622.....37455

Rules and Regulations

Federal Register

Vol. 83, No. 148

Wednesday, August 1, 2018

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0679; Airspace Docket No. 18–AEA–14]

RIN–2120–AA66

Amendment of Class D Airspace; Erie, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends the legal description of the Class D airspace at Erie International Airport/Tom Ridge Field, Erie, PA, by correcting a printing error in the latitude coordinate symbols for the airport. This action does not affect the boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, August 1, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it corrects a printing error in the geographic coordinates of Erie International Airport/Tom Ridge Field, Erie, PA.

History

The FAA Aeronautical Information Services branch found the latitude coordinate for Erie International Airport/Tom Ridge Field, Erie, PA, in Class D airspace, was incorrectly published in the **Federal Register** of May 23, 2018 (83 FR 23798). The minute latitude degrees were incorrectly listed as seconds. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by correcting a printing error in the geographic coordinates of Erie International Airport/Tom Ridge Field, Erie, PA, in Class D airspace. The coordinates are changed from (lat. 42°04′59″ N, long. 80°10′26″ W) to (lat. 42°04′59″ N, long. 80°10′26″ W).

Administratively, this change does not affect the boundaries, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

In consideration of the need correctly state the airport reference point (coordinates) to avoid confusion on the part of pilots flying in the vicinity of the airport, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AEA PA D Erie, PA [Amended]

Erie International Airport/Tom Ridge Field, PA

(Lat. 42°04′59″ N, long. 80°10′26″ W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.2-mile radius of Erie International Airport/Tom Ridge Field. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

Issued in College Park, Georgia, on July 23, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–16362 Filed 7–31–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0139; Airspace Docket No. 18–ACE–1]

RIN 2120–AA66

Amendment of Class E Airspace; Lyons, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface, at Lyons-Rice Municipal Airport, Lyons, KS. This action is necessary due to the decommissioning of the Lyons non-directional radio beacon (NDB), and cancellation of the NDB approach, and would enhance the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at this airport. Additionally, the geographic coordinates have been updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 16261; April 16, 2018) for Docket No. FAA–2018–0139 to amend Class E airspace extending upward from 700 feet above the surface, at Lyons-Rice Municipal Airport, Lyons, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA amends Title 14, Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface at Lyons-Rice Municipal Airport; by removing the Lyons NDB and the associated approach; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

Airspace reconfiguration is necessary due to decommissioning and cancellation of the Lyons NDB and NDB approach, and to support the safety and management of IFR operations at this airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

ACE KS E5 Lyons, KS [Amended]

Lyons-Rice Municipal Airport, KS
(Lat. 38°20′31″ N, long. 98°13′38″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lyons-Rice County Municipal Airport.

Issued in Fort Worth, Texas, on July 24, 2018.

Walter Tweedy,

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

[FR Doc. 2018–16363 Filed 7–31–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 170714666–7666–01]

RIN 0694–AH42

Addition of Certain Entities; and Modification of Entry on the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding forty-four entities (eight entities and thirty-six subordinate institutions) to the Entity List. The entities that are being added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These entities will be listed on the Entity List under the destination of China. This rule also modifies one entry under China to provide additional addresses and names for the entity at issue.

DATES: This rule is effective August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744) identifies entities reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The ''license review policy'' for each listed entity is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add forty-four entities (eight entities and thirty-six of their subordinate institutions) to the Entity List. These entities are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. All of the entities added as part of this rule are located in China.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these entities to the Entity List. Under that paragraph, entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entity, may be added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The ERC determined that seventeen entities, China Electronic Technology Group Corporation (CETC) 13, and twelve of its subordinate institutions; CETC–55, and two of its subordinate institutions; and Hebei Far East Communication System Engineering, all located in China, be added to the Entity List for actions contrary to the national security or foreign policy interests of the United States. These seventeen entities are being added to the Entity List on the basis of their involvement in the

procurement of U.S.-origin items for activities contrary to the national security and foreign policy interests of the United States. Specifically, the ERC determined that there is reasonable cause to believe, based on specific and articulable facts, that all of these entities are involved in the illicit procurement of commodities and technologies for unauthorized military end-use in China.

The ERC determined that twenty-seven entities, China Aerospace Science and Industry Corporation Second Academy, and thirteen of its subordinate institutions; China Electronics Technology Group Corporation 14th Research Institute, and two of its subordinate institutions; China Electronics Technology Group Corporation 38th Research Institute, and seven of its subordinate institutions; China Tech Hi Industry Import and Export Corporation; and China Volant Industry, all located in China, be added to the Entity List for actions contrary to the national security or foreign policy interests of the United States. The ERC determined that for these twenty-seven entities there is reasonable cause to believe, based on specific and articulable facts, that there is an unacceptable risk of use in (or diversion of U.S.-origin items to) military end-use activities in China.

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of all forty-four of these entities raises sufficient concern that prior review of exports, reexports or transfers (in-country) of all items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments to the entities, will enhance BIS's ability to prevent violations of the EAR.

For all forty-four entities added to the Entity List in this final rule, BIS imposes a license requirement for all items subject to the EAR, and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported or transferred (in-country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports or transfers (in-country) to the entities being added to the Entity List in this rule. The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to identify aliases and help exporters, reexporters and transferors to better identify entities on the Entity List.

This rule adds the following entities to the Entity List:

China

(1) *China Aerospace Science and Industry Corporation Second Academy,* a.k.a., the following eight aliases, and thirteen subordinate institutions:

—China Changfeng Mechanics and Electronics Technology Academy;
—China Chang Feng Mechano-Electronic Engineering Academy;
—CASIC Second Academy;
—China Chang Feng Mechano-Electronic Engineering Company;
—CASIC Academy of Defense Technology;
—Second Research Academy of CASIC;
—Changfeng Electromechanical Technology Design Institute; *and*
—China Chang Feng Mechanics and Electronics Technology Academy.

Subordinate Institution

Second Design Department, a.k.a., the following two aliases:

—Beijing Institute of Electronics Systems Engineering; *and*
—Second Planning Department.

Subordinate Institution

23rd Research Institute, a.k.a., the following two aliases:

—Beijing Institute of Radio Measurement; *and*
—BIRM.

Subordinate Institution

25th Research Institute, a.k.a., the following one alias:

—Beijing Institute of Remote Sensing Equipment.

Subordinate Institution

201 Research Institute, a.k.a., the following one alias:

—Aerospace Science and Technology Defense Technology Research and Experimental Center.

Subordinate Institution

203rd Research Institute, a.k.a., the following two aliases:

—Beijing Radio Measurement and Testing Institute; *and*
—Beijing Institute of Radio Metrology and Measurement.

Subordinate Institution

204th Research Institute, a.k.a., the following two aliases:

—Beijing Institute of Computer Applications and Simulation Technology; *and*
—706th Research Institute.

Subordinate Institution

206th Research Institute, a.k.a., the following two aliases:

—Beijing Institute of Mechanical Equipment; *and*
—Beijing Institute of Machinery and Equipment.

Subordinate Institution

207th Research Institute, a.k.a., the following three aliases:

—Beijing Guangda Optoelectronics;
—Beijing Institute of Environmental Features; *and*
—Beijing Institute of Environmental Characteristics.

Subordinate Institution

208th Research Institute, a.k.a., the following one alias:

—Beijing Electronic Document Service Center.

Subordinate Institution

210th Research Institute, a.k.a., the following one alias:

—Xian Changfeng Electromechanical Institute.

Subordinate Institution

283 Factory, a.k.a., the following one alias:

—Beijing Xinfeng Machinery Factory.

Subordinate Institution

284 Factory, a.k.a., the following two aliases:

—Beijing Changfeng Machinery Factory; *and*
—Beijing Changfeng Xinlian Project Management.

Subordinate Institution

699 Factory, a.k.a., the following one alias:

—Beijing Xinli Machinery Factory.

The following addresses apply to the entity and to the thirteen subordinate institutions:

50 Yongding Road, Haidian District, Beijing, China; *and* 51 Yongding Road, Haidian District, Beijing, China; *and* 52 Yongding Road, Haidian District, Beijing, China; *and* 58 Yongding Road, Haidian District, Beijing, China; *and* 90 Dianzi Road, Section One, Xian, China.

(2) *China Electronics Technology Group Corporation 13th Research Institute (CETC 13),* a.k.a., the following six aliases, and twelve subordinate institutions:

—Hebei Semiconductor Research Institute;
—HSRI;
—Hebei Institute of Semiconductors;
—Heibei Semiconductor Institute;
—Hebei Semiconductor; *and*
—CETC Research Institute 13.

113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China;

Subordinate Institution

Bowei Integrated Circuits, a.k.a., the following three aliases:

—Hebei Bowei Integrated;
—Hebei Bowel Technology; *and*
—Shijuang Bowei.

113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China; *and* Shijiazhuang New and Hi-Tech Dev Zone, Hebei, China.

Subordinate Institution

Envoltek, a.k.a., the following one alias:

—Hebei Envoltek Electronics.

21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China.

Subordinate Institution

Hebei Sinopack Electronics, a.k.a., the following one alias:

—Hebei Sinapack Elec.

113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China.

Subordinate Institution

Hebei Brightway International,
21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China.

Subordinate Institution

Hebei Medicines Health,
113 Hezuo Road, Shijiazhuang, Hebei, China.

Subordinate Institution

Hebei Poshing Electronics, a.k.a., the following three aliases:

—Hebei Poshin Electronics;
—Hebei Poshing Elec.; *and*
—Hubei PoshingElectronics.

113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China.

Subordinate Institution

Hebei Puxing Electronic,
113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China.

Subordinate Institution

Micro Electronic Technology, a.k.a., the following three aliases:

—Micro Electronic Technology Development Application Corp;
—METDA;
—METDAC.

113 Hezuo Road, Shijiazhuang, Hebei, China.

Subordinate Institution

Shijiazhuang Development Zone Maiteda Microelectronics Technology Development and Application Corporation,
21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China.

Subordinate Institution

MT Microsystems,
113 Hezuo Road, Shijiazhuang, Hebei, China.

Subordinate Institution

North China Integrated Circuit Corporation,
21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China; *and* 113 Hezuo Road, Shijiazhuang, Hebei, China.

Subordinate Institution

Tonghui Electronics, a.k.a., the following one alias:

—Tonghui Electronics Technology.

21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China;

(3) *China Electronics Technology Group Corporation 14th Research Institute* (CETC 14), a.k.a., the following seven aliases, and two subordinate institutions:

—Nanjing Research Institute of Electronics Technology;
—NRIET;
—Nanjing Electronics Technology Institute;
—Ministry of Information Industry Electronics;
—No 14 Research Institute;
—Research Institute 14; *and*
—CETC Research Institute 14.

Subordinate Institution

Nanjing SunSea Industry Corporation.

Subordinate Institution

Nanjing Institute of Radio Technology,

The following addresses apply to the entity and to the two subordinate institutions:

No 1 Dinghuaimen, Nanjing, China; *and* No 8 Guorui Road, Yuhua District, Nanjing, China; *and* No 4 Guping Gang, Nanjing, China; *and* 52 Huju Road, North, Nanjing, China;

(4) *China Electronics Technology Group Corporation 38th Research Institute (CETC 38),* a.k.a., the following seven aliases, and seven subordinate institutions:

—Hefei Institute of Electronic Engineering;
—Southwest China Research Institute of Radar Technology;
—East China Research Institute of Electronic Engineering;
—ECRIEE;
—No 38 Research Institute;
—Research Institute 38; *and*
—CETC Research Institute 38.

Subordinate Institution

Anhui Sun-Create Electronics.

Subordinate Institution

Anhui Bowei Chang An Electronics.

Subordinate Institution

ECU Electronic Industrial.

Subordinate Institution

Hefei ECU–TAMURA Electric.

Subordinate Institution

Anhui Bowei Guangcheng Information Technology.

Subordinate Institution

Anhui Bowei Ruida Electronics Technology.

Subordinate Institution

Brainware Terahertz.

The following addresses apply to the entity and to the seven subordinate institutions:

199 Xiangzhang Ave, Hefei, Anhui, China; *and* 19 He Huan Lu, Hefei, China; *and* 19 Hehuan Road, Hefei, China; *and* 418 Guilin Road, Shanghai, China; *and* 260 Ji Xi Road, Hefei, China; *and* 88 Pihe Road, Hefei, China; *and* Forward Road, Economics Development Zone of Luan, Luan, Anhui, China;

(5) *China Electronics Technology Group Corporation 55th Research Institute (CETC 55),* a.k.a., the following four aliases, and two subordinate institutions:

—Nanjing Electronic Devices Institute;
—CETC Research Institute 55;
—NEDI; *and*
—NEDTEK.

524 Zhongzhan East Road, Nanjing, Jiangsu, China; *and* 524 East Zhongshan Road, Nanjing, Jiangsu, China; *and* 523 East Zhongshang Road, Nanjing, Jiangsu, China; *and* 166 Middle Zhenghang Road, Nanjing, China; *and* 166 Zhengfang Mid Road, Nanjing, China; *and* 166 Zhengfand Mid Road, Nanjing, China; *and* Huaxia Sci and Tech Park Hi-Tech Development, Nanjing, China; *and* RM 2105 Huaxia Bldg, No 81 Zhongshan Rd, Nanjing, China; *and* 8 Xingwen Road, Economic and Tech, Nanjing, China.

Subordinate Institution

Nanjing Guosheng Electronics,
8 Xingwen Road, Economic and Tech, Nanjing, China; *and* 166 Middle Zhenghang Road, Nanjing, China; *and* 166 Zhengfang Mid Road, Nanjing, China; *and* 166 Zhengfand Mid Road, Nanjing, China; *and* 168 Zhengfand Mid Road, Nanjing, China; *and* 165 Zhangfang Mid-Road, Nanjing, China; *and* 414 South Zhong Shan Road, Nanjing, Jiangsu, China.

Subordinate Institution

Nanjing Guobo Electronic,
166 Zhengfang Mid Road, Nanjing, China;

(6) *China Tech Hi Industry Import and Export Corporation,* a.k.a., the following two aliases:

—CTHC; *and*
—Tianhang Industry Import and Export Company.

30 Haidian Road, Beijing, China; *and* No A 16 Zao Jun Miao, Haidian, Beijing, China;

(7) *China Volant Industry,* a.k.a., the following two aliases:

—Volinco; *and*
—China Huateng Industry.

30 Haidian Road, Beijing, China; *and* Room 703, 7th Floor, Building 1, No 11, Changchunqiao Road, Haidian District, Beijing, China; *and*

(8) *Hebei Far East Communication System Engineering,* a.k.a., the following two aliases:

—Hebei Far East Comm.; *and*
—HBFEC.

21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China; *and* 589 West Zhongshan Road, Shijiazhuang, Hebei, China.

Modifications to the Entity List

This final rule implements a decision of the ERC to modify one existing entry on the Entity List. The ERC made a determination to revise one entry under the destination of China by adding three additional aliases and five additional addresses to the entry for Chengdu GaStone Technology Co., Ltd. (CGTC), for a total of four aliases and nine addresses.

This final rule revises one entry on the Entity List to make the modifications described above:

(1) *Chengdu GaStone Technology Co., Ltd. (CGTC),* a.k.a., the following four aliases:

—-Chengdu Jiashi Technology Co.;
—Chengdu HiWafer Semiconductor;
—Chengdu Haiwei Technology; *and*
—Chengdu Zenith.

31F, A Tower, Yanlord Square, No. 1, Section 2, Renmind South Road, Chengdu China; *and* Internet of Things Industrial Park Economic Development District Xinan Hangkonggang (Southwest Airport), Shuangliu County, Chengdu; *and* 29th Floor, Yanlord Landmark, No. 1 Renmin South Road Section 2, Chengdu; *and* 29/F Yanlord Landmark Tower A, Chengdu, China; *and* Union Road, No 88 Internet of Things Industrial, Chengdu, China; *and* No 88 Wulian Road, Southwest Airp Development Zone, Chengdu, China; *and* Industrial Park of Internet of Thing SW Airport Eco Dev Zone, Chengdu, China; *and* Internet Things of Industrial Pa Southwest Airport Economic, Chengdu, China; *and* The Industrial Park of Internet of Things, Southwest Airport Economic Development Zone, Chengdu, China.

Export Administration Act of 1979

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 15, 2017, 82 FR 39005 (August 16, 2017), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. For the entities added to the Entity List in this rule, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation and a 30-day delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)). BIS's implementation of this rule is necessary to protect U.S. national security and foreign policy interests by preventing items subject to the EAR from being exported, reexported, or transferred (in-country) to the entities being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, the entities being added to the Entity List by this action would continue to be able to receive items subject to the EAR without a BIS license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these entities notice of the U.S. Government's intention to place them on the Entity List, which could provide them with an incentive to accelerate their receipt of items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, including taking steps to set up additional aliases, change addresses, and engaging in other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other

law requires that a notice of proposed rulemaking and an opportunity for public comment be provided for this rule.

5. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act (APA) requiring prior notice and the opportunity for public comment for the one modification to an Entity list entry included in this rule because doing so would be contrary to the public interest. In addition, the one change is limited to providing additional addresses and aliases, which will assist the public in more easily identifying the listed entity.

6. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017); Notice of September 18, 2017, 82 FR 43825 (September 19, 2017); Notice of November 6, 2017, 82 FR 51971 (November 8, 2017); Notice of January 17, 2018, 83 FR 2731 (January 18, 2018).

■ 2. Supplement No. 4 to part 744 is amended under China, People's Republic of:

■ a. By revising one entity ''Chengdu GaStone Technology Co., Ltd. (CGTC)''; and

■ b. By adding, in alphabetical order, eight entities.

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF.	*	*	*	*
	Chengdu GaStone Technology Co., Ltd. (CGTC), a.k.a., the following four aliases: —Chengdu Jiashi Technology Co.; —Chengdu HiWafer Semiconductor; —Chengdu Haiwei Technology; *and* —Chengdu Zenith. 31F, A Tower, Yanlord Square, No. 1, Section 2, Renmind South Road, Chengdu China; *and* Internet of Things Industrial Park Economic Development District Xinan Hangkonggang (Southwest Airport), Shuangliu County, Chengdu; *and* 29th Floor, Yanlord Landmark, No. 1 Renmin South Road Section 2, Chengdu; *and* 29/F Yanlord Landmark Tower A, Chengdu, China; *and* Union Road, No 88 Internet of Things Industrial, Chengdu, China; *and* No 88 Wulian Road, Southwest Airp Development Zone, Chengdu, China; *and* Industrial Park of Internet of Thing SW Airport Eco Dev Zone, Chengdu, China; *and* Internet Things of Industrial Pa Southwest Airport Economic, Chengdu, China; *and* The Industrial Park of Internet of Things, Southwest Airport Economic Development Zone, Chengdu, China	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 44683, 8/1/14. 81 FR 14958, 3/21/16. 83 FR [INSERT FR PAGE NUMBER], 8/1/2018.
*	*	*	*	*
	China Aerospace Science and Industry Corporation Second Academy, a.k.a., the following eight aliases, and thirteen subordinate institutions: —China Changfeng Mechanics and Electronics Technology Academy; —China Chang Feng Mechano-Electronic Engineering Academy; —CASIC Second Academy;	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	83 FR [INSERT FR PAGE NUMBER], 8/1/2018.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	—China Chang Feng Mechano-Electronic Engineering Company; —CASIC Academy of Defense Technology; —Second Research Academy of CASIC; —Changfeng Electromechanical Technology Design Institute; *and* —China Chang Feng Mechanics and Electronics Technology Academy. *Subordinate institution* Second Design Department, a.k.a., the following two aliases: —Beijing Institute of Electronics Systems Engineering; *and* —Second Planning Department. *Subordinate institution* 23rd Research Institute, a.k.a., the following two aliases: —Beijing Institute of Radio Measurement; *and* —BIRM. *Subordinate institution* 25th Research Institute, a.k.a., the following one alias: —Beijing Institute of Remote Sensing Equipment. *Subordinate institution* 201 Research Institute, a.k.a., the following one alias: —Aerospace Science and Technology Defense Technology Research and Experimental Center. *Subordinate institution* 203rd Research Institute, a.k.a., the following two aliases: —Beijing Radio Measurement and Testing Institute; *and* —Beijing Institute of Radio Metrology and Measurement. *Subordinate institution* 204th Research Institute, a.k.a., the following two aliases: —Beijing Institute of Computer Applications and Simulation Technology; *and* —706th Research Institute. *Subordinate institution* 206th Research Institute, a.k.a., the following two aliases: —Beijing Institute of Mechanical Equipment; *and* —Beijing Institute of Machinery and Equipment. *Subordinate institution* 207th Research Institute, a.k.a., the following three aliases: —Beijing Guangda Optoelectronics; —Beijing Institute of Environmental Features; *and* —Beijing Institute of Environmental Characteristics. *Subordinate institution* 208th Research Institute, a.k.a., the following one alias: —Beijing Electronic Document Service Center. *Subordinate institution* 210th Research Institute, a.k.a., the following one alias: —Xian Changfeng Electromechanical Institute.			

Country	Entity	License requirement	License review policy	Federal Register citation
	Subordinate institution 283 Factory, a.k.a., the following one alias: —Beijing Xinfeng Machinery Factory. *Subordinate institution* 284 Factory, a.k.a., the following two aliases: —Beijing Changfeng Machinery Factory; *and* —Beijing Changfeng Xinlian Project Management. *Subordinate institution* 699 Factory, a.k.a., the following one alias: —Beijing Xinli Machinery Factory. The following addresses apply to the entity and to the thirteen subordinate institutions: 50 Yongding Road, Haidian District, Beijing, China; *and* 51 Yongding Road, Haidian District, Beijing, China; *and* 52 Yongding Road, Haidian District, Beijing, China; *and* 58 Yongding Road, Haidian District, Beijing, China; *and* 90 Dianzi Road, Section One, Xian, China.			
*	*	*	*	*
	China Electronics Technology Group Corporation 13th Research Institute (CETC 13), a.k.a., the following six aliases, and twelve subordinate institutions: —Hebei Semiconductor Research Institute; —HSRI; —Hebei Institute of Semiconductors; —Hebei Semiconductor Institute; —Hebei Semiconductor; *and* —CETC Research Institute 13. 113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China. *Subordinate institution* Bowei Integrated Circuits, a.k.a., the following three aliases: —Hebei Bowei Integrated; —Hebei Bowel Technology; *and* —Shijuang Bowei. 113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China; *and* Shijiazhuang New and Hi-Tech Dev Zone, Hebei, China. *Subordinate institution* Envoltek, a.k.a., the following one alias: —Hebei Envoltek Electronics. 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China. *Subordinate institution* Hebei Sinopack Electronics, a.k.a., the following one alias: —Hebei Sinapack Elec. 113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER], 8/1/2018.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Subordinate institution Hebei Brightway International, 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China. *Subordinate institution* Hebei Medicines Health, 113 Hezuo Road, Shijiazhuang, Hebei, China. *Subordinate institution* Hebei Poshing Electronics, a.k.a., the following three aliases: —Hebei Poshin Electronics; —Hebei Poshing Elec.; *and* —Hubei PoshingElectronics. 113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China. *Subordinate institution* Hebei Puxing Electronic, 113 Hezuo Road, Shijiazhuang, Hebei, China; *and* 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China. *Subordinate institution* Micro Electronic Technology, a.k.a., the following three aliases: —Micro Electronic Technology Development Application Corp; —METDA; *and* —METDAC. 113 Hezuo Road, Shijiazhuang, Hebei, China. *Subordinate institution* Shijiazhuang Development Zone Maiteda Microelectronics Technology Development and Application Corporation, 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China. *Subordinate institution* MT Microsystems, 113 Hezuo Road, Shijiazhuang, Hebei, China. *Subordinate institution* North China Integrated Circuit Corporation, 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China; *and* 113 Hezuo Road, Shijiazhuang, Hebei, China. *Subordinate institution* Tonghui Electronics, a.k.a., the following one alias: —Tonghui Electronics Technology. 21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China.			
	China Electronics Technology Group Corporation 14th Research Institute (CETC 14), a.k.a., the following seven aliases, and two subordinate institutions: —Nanjing Research Institute of Electronics Technology; —NRIET; —Nanjing Electronics Technology Institute;	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER], 8/1/2018.

Country	Entity	License requirement	License review policy	Federal Register citation
	—Ministry of Information Industry Electronics; —No 14 Research Institute; —Research Institute 14; *and* —CETC Research Institute 14. *Subordinate institution* Nanjing SunSea Industry Corporation. *Subordinate institution* Nanjing Institute of Radio Technology. The following addresses apply to the entity and the two subordinate institutions: No 1 Dinghuaimen, Nanjing, China; *and* No 8 Guorui Road, Yuhua District, Nanjing, China; *and* No 4 Guping Gang, Nanjing, China; *and* 52 Huju Road, North, Nanjing, China.			
	* *	*	* *	*
	China Electronics Technology Group Corporation 38th Research Institute (CETC 38), a.k.a., the following seven aliases, and seven subordinate institutions: —Hefei Institute of Electronic Engineering; —Southwest China Research Institute of Radar Technology; —East China Research Institute of Electronic Engineering; —ECRIEE; —No 38 Research Institute; —Research Institute 38; *and* —CETC Research Institute 38. *Subordinate institution* Anhui Sun-Create Electronics. *Subordinate institution* Anhui Bowei Chang An Electronics. *Subordinate institution* ECU Electronic Industrial. *Subordinate institution* Hefei ECU–TAMURA Electric. *Subordinate institution* Anhui Bowei Guangcheng Information Technology. *Subordinate institution* Anhui Bowei Ruida Electronics Technology. *Subordinate institution* Brainware Terahertz. The following addresses apply to the entity and to the seven subordinate institutions: 199 Xiangzhang Ave, Hefei, Anhui, China; *and* 19 He Huan Lu, Hefei, China; *and* 19 Hehuan Road, Hefei, China; *and* 418 Guilin Road, Shanghai, China; *and* 260 Ji Xi Road, Hefei, China; *and* 88 Pihe Road, Hefei, China; *and* Forward Road, Economics Development Zone of Luan, Luan, Anhui, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER], 8/1/2018.
	China Electronics Technology Group Corporation 55th Research Institute (CETC 55), a.k.a., the following four aliases, and two subordinate institutions: —Nanjing Electronic Devices Institute; —CETC Research Institute 55; —NEDI; *and* —NEDTEK.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER], 8/1/2018.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	524 Zhongzhan East Road, Nanjing, Jiangsu, China; *and* 524 East Zhongshan Road, Nanjing, Jiangsu, China; *and* 523 East Zhongshang Road, Nanjing, Jiangsu, China; *and* 166 Middle Zhenghang Road, Nanjing, China; *and* 166 Zhengfand Mid Road, Nanjing, China; *and* 166 Zhengfang Mid Road, Nanjing, China; *and* Huaxia Sci and Tech Park Hi-Tech Development, Nanjing, China; *and* RM 2105 Huaxia Bldg, No 81 Zhongshan Rd, Nanjing, China; *and* 8 Xingwen Road, Economic and Tech, Nanjing, China.			
	Subordinate institution			
	Nanjing Guosheng Electronics,			
	8 Xingwen Road, Economic and Tech, Nanjing,Chia; *and* 166 Middle Zhenghang Road, Nanjing, China; *and* 166 Zhengfang Mid Road, Nanjing, China; *and* 166 Zhengfand Mid Road, Nanjing, China; *and* 168 Zhengfand Mid Road, Nanjing, China; *and* 165 Zhangfang Mid-Road, Nanjing, China; *and* 414 South Zhong Shan Road, Nanjing, Jiangsu, China; *and*			
	Subordinate institution			
	Nanjing Guobo Electronic,			
	166 Zhengfang Mid Road, Nanjing, China.			
	China Tech Hi Industry Import and Export Corporation, a.k.a., the following two aliases:	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER], 8/1/2018.
	—CTHC; *and*			
	—Tianhang Industry Import and Export Company.			
	30 Haidian Road, Beijing, China; *and* No A 16 Zao Jun Miao, Haidian, Beijing, China.			
	China Volant Industry a.k.a., the following two aliases:	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER], 8/1/2018.
	—Volinco; *and*			
	—China Huateng Industry.			
	30 Haidian Road, Beijing, China; *and* Room 703, 7th Floor, Building 1, No 11, Changchunqiao Road, Haidian District, Beijing, China.			
	* *	*	* *	*
	Hebei Far East Communication System Engineering, a.k.a., the following two aliases:	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	83 FR [INSERT FR PAGE NUMBER], 8/1/2018.
	—Hebei Far East Comm.; *and*			
	—HBFEC.			
	21 Changsheng Street, Shijiazhuang, Hebei, China; *and* 21 Changsheng Road, Shijiazhuang, Hebei, China; *and* 589 West Zhongshan Road, Shijiazhuang, Hebei, China.			
	* *	*	* *	*
*	* *	*	* *	*

Dated: July 27, 2018.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2018–16474 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 80

[Docket ID: DOD–2017–OS–0047]

RIN 0790–AJ92

Provision of Early Intervention Services to Eligible Infants and Toddlers With Disabilities and Their Families, and Special Education Children With Disabilities Within the Section 6 School Arrangements

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of Defense (DoD) regulation concerning the provision of early intervention services to eligible infants and toddlers with disabilities and their families, and special education children with disabilities within the Section 6 school arrangements. The contents of this part have been updated and incorporated into the revision of DoD's regulation at 32 CFR part 57, ''Provision of Early Intervention and Special Education Services to Eligible DoD Dependents.'' Therefore, this part is unnecessary and can be removed from the CFR.

DATES: This rule is effective on August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Rebecca Lombardi, 571–372–0862.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since its content was incorporated into another CFR part for which public comment was taken.

DoD internal guidance concerning the provision of early intervention services to eligible infants and toddlers with disabilities and their families, and special education children with disabilities within the Section 6 school arrangements will continue to be published in DoD Instruction 1342.12 (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/134212p.pdf*) and DoD Manual 1342.12 (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/134212m.pdf*). This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 80

Education of individuals with disabilities, Government employees, Infants and children, Military personnel.

PART 80—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 80 is removed.

Dated: July 25, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–16394 Filed 7–31–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Docket ID: USN–2017–HQ–0003]

RIN 0703–AA95

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Department of the Navy's Freedom of Information Act (FOIA) program. The DoD has revised their FOIA program rule to include DoD component information and has removed the requirement for component supplementary rules. Therefore, the Navy's FOIA program rule can be removed from the CFR.

DATES: This rule is effective on August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Christopher Julka at 703–697–0031.

SUPPLEMENTARY INFORMATION: On February 6, 2018 (83 FR 5196–5197), the DoD published a revised FOIA program rule as a result of the FOIA Improvement Act of 2016. When the DoD FOIA program rule was revised, it included DoD component information and removed the requirement for component supplementary rules. The DoD now has one DoD-level rule for the FOIA program at 32 CFR part 286 that contains all the codified information required for the Department. Therefore, 32 CFR part 701, subparts A through D, can be removed from the CFR.

It has been determined that publication of these subpart removals from the CFR for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publicly available on the Department's website.

Department of the Navy internal guidance concerning the implementation of the FOIA within the Navy will remain in effect and will continue to be published in SECNAVINST 5720.42F (available at *https://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-700%20General%20External%20and%20Internal%20Relations%20Services/5720.42F.pdf*).

This rule is one of 14 separate DoD FOIA rules. With the finalization of the DoD-level FOIA rule at 32 CFR part 286, the Department is eliminating the need for this separate FOIA rule and reducing costs to the public as explained in the preamble of the DoD-level FOIA rule published at 83 FR 5196–5197.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 701

Freedom of information.

Accordingly, 32 CFR part 701 is amended as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 5 U.S.C. 552.

Subparts A, B, C, and D [Removed and Reserved]

■ 2. Remove and reserve subparts A through D.

Dated: July 26, 2018.

Emilee Kujat Baldini,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–16347 Filed 7–31–18; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0701; FRL–9981–44—Region 5]

Air Plan Approval; Wisconsin; Modification of Greenhouse Gas Language

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an approval to a revision to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on November 28, 2017. In this revision, WDNR makes modifications to the language associated with how greenhouse gases are evaluated in the Prevention of Significant Deterioration (PSD) program. These revisions were made to reflect changes required by the United States Supreme Court in its June 23, 2014 decision, *Utility Air Regulatory Group (UARG)* v. *EPA),* 134 S. Ct. 2427.

DATES: This final rule is effective on August 31, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0701. 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 Rachel Rineheart, Environmental Engineer, at (312) 886–7017 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017, *rineheart.rachel@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. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. Background

This final rulemaking addresses the November 28, 2017 WDNR submittal for SIP revision, revising the rules in the Wisconsin SIP to reflect the changes required by *UARG* v. *EPA,* 134 S. Ct. 2427, on how greenhouse gases are evaluated in the PSD program.

On June 23, 2014, in *UARG* v. *EPA,* the Supreme Court ruled that the Clean Air Act (CAA) neither compels nor permits EPA to adopt an interpretation of the CAA requiring a source to obtain a PSD or title V permit based solely on its potential greenhouse gas emissions. The ruling supported EPA's decision to require sources otherwise subject to PSD review to comply with BACT emission standards for greenhouse gases. In other words, with respect to PSD, the ruling upheld PSD permitting requirements for greenhouse gases under Step 1 of the Tailoring rule for ''anyway'' sources, *i.e.,* sources that were subject to PSD review anyway due to their non-greenhouse gas regulated pollutants, and invalidated PSD permitting requirement for Step 2 sources, *i.e.,* sources that were considered major solely as a result of their greenhouse gas emissions.

Following the *UARG* v. *EPA* decision, WDNR is modifying its PSD rules in NR 405.07(9) to establish the conditions under which greenhouse gases at a stationary source shall be subject to the PSD regulations.

On May 25, 2018 (83 FR 24258), EPA published a notice of proposed rulemaking (NPRM) proposing approval of Wisconsin's November 28, 2017 submittal for SIP revision on the basis that we found it consistent with the June 23, 2014, *UARG* v. *EPA* ruling.

The specific details of Wisconsin's November 28, 2017 SIP revision and the rationale for EPA's approval are discussed in the NPRM 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 approving Wisconsin's November 28, 2017 submittal for SIP revision as the modification to the greenhouse gas language in NR 405.07(9) is consistent with the June 23, 2014, *UARG* v. *EPA* ruling.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews.

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 17, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by revising paragraphs (c)(126) introductory text and (c)(126)(i)(D) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(126) On May 4, 2011, June 20, 2012, and September 28, 2012, Wisconsin Department of Natural Resources (WDNR) submitted a request to revise Wisconsin's Prevention of Significant Deterioration (PSD) program to incorporate the ''Tailoring Rule'' and the Federal deferral for biogenic CO_2 emissions into Wisconsin's SIP. On November 28, 2017, WDNR submitted a modification to the greenhouse gas language to be consistent with the June 23, 2014, *UARG* v. *EPA* ruling.

(i) * * *

(D) Wisconsin Administrative Code, NR 405.07 Review of major stationary sources and major modifications—source applicability and exemptions. NR 405.07(9), as published in the Wisconsin Administrative Register July 2015, No. 715, effective August 1, 2015.

* * * * *

[FR Doc. 2018–16469 Filed 7–31–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2014–0604; FRL–9981–23—Region 1]

Air Plan Approval; Vermont; Infrastructure Requirement for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Vermont. This revision addresses the interstate transport requirements of the Clean Air Act (CAA), referred to as the good neighbor provision, with respect to the primary 2010 sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). This action approves Vermont's demonstration that the State is meeting its obligations regarding the transport of SO_2 emissions into other states. This action is being taken under the Clean Air Act.

DATES: This rule is effective on August 31, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2014–0604. 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.,* 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 at *www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109—3912, tel. (617) 918–1657; or by email at *dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On November 2, 2015, the Vermont Department of Environmental Conservation (VT DEC) submitted a formal SIP revision certifying that its SIP was adequate to meet the program elements required by Section 110(a)(2) of the CAA with respect to the 2008 ozone, 2010 primary nitrogen dioxide (NO_2), and 2010 primary SO_2 NAAQS

(2015 SIP submittal). On June 27, 2017 (82 FR 29005), the EPA approved most of the State's submission. The EPA conditionally approved the State's submission in relation to subsections (C), (D), and (J) of CAA Section 110(a)(2) for the prevention of significant deterioration permit program. At that time, the EPA did not take action on the State's submittal regarding VT DEC's certification that its SIP met the requirements of Section 110(a)(2)(D)(i)(I) for the 2010 primary SO_2 NAAQS.

On April 10, 2018 (83 FR 15336), the EPA published a Notice of Proposed Rulemaking (NPR) for the portion of the 2015 SIP submittal that demonstrated Vermont's SIP meets the infrastructure requirements of Section 110(a)(2)(D)(i)(I) for the 2010 primary SO_2 NAAQS. The rationale for the EPA's proposed action is explained in the NPR and will not be restated here.

II. Response to Comments

The EPA received four comments during the comment period. The comments discuss subjects outside the scope of an infrastructure SIP action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. As such, they are not germane and do not require further response to finalize the action as proposed.

III. Final Action

The EPA is approving Vermont's November 2, 2015 infrastructure submittal for the 2010 primary SO_2 NAAQS as it pertains to Section 110(a)(2)(D)(i)(I) of the CAA.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 26, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart UU—Vermont

■ 2. Section 52.2370 is amended in paragraph (e) table by adding the entry ''Transport Element of the Infrastructure SIP for the 2010 SO_2 NAAQS'' after the entry ''Infrastructure SIP for the 2010 SO_2 NAAQS'' to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(e) * * *

VERMONT NON-REGULATORY

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
* *	*	*	*	* *
Transport Element of the Infrastructure SIP for the 2010 SO_2 NAAQS.	Statewide	11/2/2015	8/1/2018 [Insert **Federal Register** citation]	Approved submittal meets the requirements of Section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS
* *	*	*	*	* *

[FR Doc. 2018–16413 Filed 7–31–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0065; FRL–9979–40—Region 1]

Air Plan Approval; Connecticut; Infrastructure State Implementation Plan Requirements; Prevention of Significant Deterioration Permit Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from Connecticut regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 fine particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), and a SIP submission addressing interstate transport requirements of the CAA for the 2006 $PM_{2.5}$ NAAQS. In addition, we are approving one statute included in the SIP for the 2012 $PM_{2.5}$ NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The EPA is also approving revisions to the SIP submitted by Connecticut on October 18, 2017, satisfying Connecticut's earlier commitment to adopt and submit provisions that meet certain requirements of the federal Prevention of Significant Deterioration (PSD) permit program. In addition, we are converting the June 3, 2016 conditional approval to full approval for elements of Connecticut's infrastructure SIP regarding PSD requirements to treat nitrogen oxides (NO_X) as a precursor to ozone and to establish a minor source baseline date for $PM_{2.5}$ emissions for the 1997 and 2006 $PM_{2.5}$, 1997 and 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. This action is being taken under the Clean Air Act.

DATES: This rule is effective on August 31, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2017–0065. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, tel. (617) 918–1684; *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Response to Comments
III. Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background and Purpose

On March 19, 2018 (83 FR 11933), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut. The NPRM proposed approval of three formal SIP submissions from the Connecticut Department of Energy and Environmental Protection (CT DEEP). These included a SIP revision addressing the ''Good Neighbor'' (or ''transport'') (Section 110(a)(2)(D)(i)(I) of the CAA) provisions for the 2006 $PM_{2.5}$ [1] NAAQS submitted on August 19, 2011, and an infrastructure SIP (including the transport provisions) for the 2012 $PM_{2.5}$ NAAQS submitted on December 14, 2015. In addition, on October 18, 2017, CT DEEP submitted a SIP revision addressing applicable requirements for the PSD permit program in Part C of the CAA that are codified in 40 CFR 51.166.

This rulemaking does not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (''SSM'' emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final New Source Review (NSR) Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas separately. A

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often referred to as ''fine'' particles.

detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' *See* 79 FR 27241 at 27242–45.

The rationale for EPA's proposed action is explained in the NPR and will not be restated here.

II. Response to Comments

EPA received 12 comments during the comment period, three of which are essentially identical. The nine distinct comments discuss subjects outside the scope of an infrastructure SIP action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. As such, they are not germane.

Only the three identical comments make direct reference to the proposed rule or to Connecticut's SIP, but even these comments lack specificity and are unclear. They state that, ''as much as the rule gives clear mandate and responsibility of the state in SIP [sic], it does not give out the responsibilities of other agencies and stakeholders in absolute terms.'' The comments, however, provide no further explanation for this statement, such as articulating what particular ''responsibilities'' the SIP should, but does not currently, ''give out,'' offering any ''absolute terms'' to be included, or providing any specifics regarding the ''other agencies and stakeholders.'' Moreover, it is not even clear that the commenter(s) opposes EPA's proposed approval of Connecticut's submittals. In short, most of the comments are not germane and none of them provide a cogent explanation of how the proposed action should differ in any way nor any relevant legal basis for any changes. Consequently, the comments require no further response, and we are finalizing the action as proposed.

III. Final Action

EPA is approving Connecticut's infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS, as well as the transport provisions (CAA section 110(a)(2)(D)(i)(I)) of the state's infrastructure SIP submittal for the 2006 $PM_{2.5}$ NAAQS as revisions to the Connecticut SIP. EPA is also approving, into the Connecticut SIP, revisions to the PSD permit program pertaining to treating NO_X as a precursor to ozone (RCSA Section 22a–174–3a(k)(1)(C)) and establishing a minor source baseline date for $PM_{2.5}$ (RCSA Section 22a–174–1(71)). Additionally, EPA is approving revised CGS section 16a–21a, ''Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency. Enforcement.'' effective July 1, 2015. Finally, we are converting to full approval the June 3, 2016 conditional approval of Connecticut's infrastructure SIP submittals for the PSD-related requirements in section 110(a)(2)(C), (D)(i)(II), and J for the 1997 and 2006 $PM_{2.5}$, 1997 and 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the General Statutes of Connecticut and state regulations described in the amendments to 40 CFR part 52 set forth below. Specifically, EPA is finalizing the incorporation by reference of Connecticut General Statute Title 16a, Chapter 296, Section 16a–21a, and state regulations, namely the provisions at Regulation 22a–174–1(71) and at 22a–174–3a(k)(1)(C). The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 26, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraphs (c)(103)(i)(C) and (c)(118) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(103) * * *

(i) * * *

(C) Connecticut General Statute Section16a–21a, which was approved in paragraph (c)(103)(i)(B) of this section, is removed and replaced by Connecticut General Statute 16a–21a, see paragraph (c)(118)(i)(A) of this section.

* * * * *

(118) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on August 19, 2011, December 14, 2015, and October 18, 2017.

(i) *Incorporation by reference.* (A) ''Definitions,'' Regulation 22a–174–1(71), the definition of ''Minor source baseline date,'' amended October 5, 2017.

(B) ''Permit to Construct and Operate Stationary Sources,'' Regulation 22a–174–3a(k)(1)(C), amended October 5, 2017.

(C) Connecticut General Statute, Title 16a, ''Planning and Energy Policy,'' Chapter 296, ''Operation of Fuel Supply Business,'' Section 16a–21a, ''Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency. Enforcement,'' effective July 1, 2015, as published in the State of Connecticut General Statutes, Revision of 1958, Revised to January 1, 2017.

(ii) *Additional materials.* (A) The Connecticut Department of Energy and Environmental Protection document, ''Addendum to the CAA § 110(a)(2)(D)(i)(I) Portion of Connecticut's Infrastructure Submittal for the 2006 $PM_{2.5}$ NAAQS,'' August 19, 2011.

(B) The Connecticut Department of Energy and Environmental Protection document, ''Connecticut State Implementation Plan for Clean Air Act Section 110(a) Infrastructure Elements: 2012 $PM_{2.5}$ NAAQS,'' December 14, 2015.

(C) The Connecticut Department of Energy and Environmental Protection document, State Implementation Plan Revision Concerning the Consumer Products, Architectural and Industrial Maintenance Coatings and Prevention of Significant Deterioration Permit Programs,'' October 18, 2017.

§ 52.380 [Amended]

■ 3. Section 52.380 is amended by:

■ a. Under paragraph (e)(2), removing the text ''Note 1 to paragraphs (f) through (h)'' and adding in its place ''Note 1 to paragraphs (f) through (g)''; and

■ b. Removing and reserving paragraph (h).

■ 4. In § 52.385, Table 52.385 is amended by adding entries for state citations 22a–174–1 and 22a–174–3a in numerical order by state citation and date approved by EPA and revising the entry for state citation Section 16a–21a to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut state citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/ description
		Date adopted by state	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–1	Definitions	10/05/17	08/01/17	[Insert **Federal Register** citation].	c (118)	Modified definition of ''minor source baseline date'' for purposes of adding $PM_{2.5}$.
*	*	*	*	*	*	*
22a–174–3a ...	Permit to Construct and Operate Stationary Sources.	10/05/17	08/01/17	[Insert **Federal Register** citation].	c (118)	Amendment of subsection (k)(1)(C).
*	*	*	*	*	*	*
Connecticut General Statutes Section 16a–21a.	Sulfur content of home heating oil and off road diesel fuel. Suspension of requirements for emergency. Enforcement.	07/01/15	08/01/17	[Insert **Federal Register** citation].	c (118)	Allowable sulfur content of fuels provided. Criteria for suspension of requirements and for enforcement identified.

TABLE 52.385—EPA-APPROVED REGULATIONS—Continued

Connecticut state citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/ description
		Date adopted by state	Date approved by EPA			
*	*	*	*	*	*	*

■ 5. Section 52.386 is amended by adding paragraph (c) to read as follows:

§ 52.386 Section 110(a)(2) infrastructure requirements.

* * * * *

(c) The Connecticut Department of Energy and Environmental Protection submitted the following infrastructure SIPs on these dates: 2006 $PM_{2.5}$ NAAQS—August 19, 2011 (CAA section 110(a)(2)(D)(i)(I) transport provisions), and 2012 $PM_{2.5}$ NAAQS—December 14, 2015. These infrastructure SIPs are approved. Also with respect to the 1997 and 2006 $PM_{2.5}$, 1997 and 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS, elements related to PSD, which are in CAA section 110(a)(2)(C), (D)(i)(II), and (J) and were previously conditionally approved, are now approved.

[FR Doc. 2018–16431 Filed 7–31–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0150; FRL–9980–39]

Titanium dioxide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the exemption from the requirement of a tolerance for residues of titanium dioxide (CAS Reg. No. 13463–67–7) when used as an inert ingredient in pesticide formulations applied to growing crops to allow for use as a carrier. SciReg. Inc., on behalf of Bayer CropScience Biologics GmbH, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of titanium dioxide resulting from this use.

DATES: This regulation is effective August 1, 2018. Objections and requests for hearings must be received on or before October 1, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0150, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0150 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 1, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0150, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or

delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of May 18, 2018 (83 FR 23247) (FRL–9976–87), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11085) by SciReg. Inc., on behalf of Bayer CropScience Biologics GmbH, Lukaswiese 4, 23970 Wismar, Germany. The petition requested that the 40 CFR 180.920 exemption from the requirement of a tolerance for residues of titanium dioxide (CAS Reg. No. 13463–67–7) be amended to allow for use as a carrier when used as an inert ingredient in pesticide formulations applied to growing crops only. That document referenced a summary of the petition prepared by SciReg. Inc., on behalf of Bayer CropScience Biologics GmbH, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for titanium dioxide including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with titanium dioxide follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The available toxicity studies on titanium dioxide via the oral route of exposure clearly demonstrate a lack of toxicity. The several studies in mice, rats, dogs, cats, rabbits and other species of varying durations do not indicate toxicity, even at very high doses (*e.g.,* 50,000 ppm or 2,500 mg/kg/day dietary exposure for two years in rats). There are no studies on the dermal toxicity of titanium dioxide and there is no expected toxicity via the dermal route of exposure because as an insoluble solid material, titanium dioxide is not absorbed via the skin.

The available inhalation studies indicate that the primary toxicity of titanium dioxide is due to deposition of the inhaled particles. Although these studies suggest equivocal evidence of carcinogenicity due to prolonged exposure to titanium dioxide particles, EPA has determined that these effects are not relevant for assessing risk from exposure to titanium dioxide when used as an inert ingredient in pesticide formulations based on the following. First, tumors were only observed in two of the available studies and only in one species. In one study, those tumors were only observed in rats continually exposed to ultrafine particles of titanium dioxide. In the second study, tumors were only observed from exposure to fine particles of titanium dioxide at extremely high concentrations (250 mg/m^3), in which the animals experienced overloading of lung clearance, with chronic inflammation resulting in lung tumors. All but one of the tumors in the second study were subsequently reclassified as non-neoplastic or non-cancerous in nature. No tumors were observed in studies involving mice.

The titanium dioxide used in pesticide formulations is considered pigmentary grade, not ultrafine or nanoscale. Consequently, the tumors observed from exposure to ultrafine particles of titanium dioxide are not relevant for assessing exposure to the type of titanium dioxide used in pesticide formulations. Following the reclassification of the tumors observed in the second inhalation study, EPA does not consider these effects to be strong evidence of carcinogenicity from exposure to fineparticle-sized titanium dioxide. Further, EPA does not expect any reasonably foreseeable uses of titanium dioxide in pesticide formulations that might result in residential exposures that would approach the levels of exposure necessary to elicit the effects seen in the available inhalation study. The levels at which effects were observed in that study greatly exceed any reasonable

dose for toxicity testing and any likely residential exposure levels. Moreover, when used as an inert in pesticide formulations, titanium dioxide will be bound to other materials, with no significant inhalation exposure to titanium dioxide particles themselves.

This position is consistent with the National Institute of Occupational Health and Safety's (NIOSH) recent assessment that ultrafine but not fine titanium dioxide would be considered a ''potential occupational carcinogen.'' The NIOSH Current Intelligence Bulletin ''Occupational Exposure to Titanium Dioxide'' concludes that ''[t]he lung tumors observed in rats after exposure to 250 mg/m^3 of fine TiO_2 [titanium dioxide] were the basis for the original NIOSH designation of TiO_2 as a ''potential occupational carcinogen.'' However, because this dose is considered to be significantly higher than currently accepted inhalation toxicology practice, NIOSH concluded that the response at such a high dose should not be used in making its hazard identification.'' NIOSH concluded that the data is insufficient to classify fine titanium dioxide as a potential occupational carcinogen.

Because the predominant form of titanium dioxide used commercially, and the form used as an inert ingredient in pesticide formulations, is pigment grade, which is not in the ultrafine or nanoscale particle size range but rather in the fine particle size range, EPA concludes that carcinogenicity is not a concern from exposure to titanium dioxide resulting from its use as an inert ingredient in pesticide formulations.

Specific information on the studies received and the nature of the adverse effects caused by titanium dioxide as well as the no-observed-adverse-effect level (NOAEL) and the lowest-observed-adverse-effect level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of July 27, 2012 (77 FR 44151) (FRL–9354–6) and in the Agency's risk assessment which can be found at *http://www.regulations.gov* in document ''Titanium Dioxide; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When used as an Inert Ingredient in Pesticide Formulations'' in docket ID number EPA–HQ–OPP–2018–0150.

B. Toxicological Points of Departure/ Levels of Concern

Because the available data indicate no toxicity via the oral route of exposure, no endpoint of concern for that route of exposure has been identified in the available database. This conclusion is in agreement with the conclusion of the World Health Organization (WHO) Committee on Food Coloring Materials that no Acceptable Daily Intake (ADI) need be set for the use of titanium dioxide based on the range of acute, sub-acute, and chronic toxicity assays, all showing low mammalian toxicity. Similarly, no significant toxicity of titanium dioxide is expected via the dermal route of exposure, so no endpoint was identified.

Because the effects seen in inhalation studies occurred at doses above the levels at which pesticide exposure is expected and for particle sizes that are different from the size of titanium dioxide used in pesticide formulations, the Agency has concluded that those risks are not relevant for assessing risk from pesticide exposure and therefore, did not identify an endpoint for assessing inhalation exposure risk.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to titanium dioxide, EPA considered exposure under the proposed exemption from the requirement of a tolerance and all other existing exemptions from the requirement of a tolerance for residues of titanium dioxide. EPA assessed dietary exposures from titanium dioxide in food as follows:

Residues of titanium dioxide are exempt from the requirement of a tolerance when used as an inert ingredient in many different circumstances: When used in pesticide formulations applied to growing crops as a pigment/coloring agent in plastic bags used to wrap growing bananas or colorant on seeds for planting (40 CFR 180.920); when used in pesticide formulations applied to animals (40 CFR 180.930); when used as a UV protectant in microencapsulated formulations of the insecticide lambda-cyhalothrin at no more than 3.0% by weight (40 CFR 180.1195); when used as a UV stabilizer in pesticide formulations of napropamide at no more than 5% of the product formulation (40 CFR 180.1195); when used in pesticide placed at entrance to bee hives intended to control varroa mites in hive at a maximum of 0.1% wt/wt (40 CFR 180.1195); and when used in anthraquinone pesticide formulations at a maximum of 45% wt/wt (40 CFR 180.1195). Titanium dioxide is also approved for use as a colorant in food (21 CFR 73.575).

Although dietary exposure may be expected from use of titanium dioxide in pesticide formulations applied to bee hives and on other crops (as well as from other non-pesticidal sources), a quantitative exposure assessment for titanium dioxide was not conducted because no endpoint of concern was identified in the database.

2. *Dietary exposure from drinking water.* Since a hazard endpoint of concern was not identified for the acute and chronic dietary assessment, a quantitative dietary exposure risk assessment for drinking water was not conducted, although exposures from drinking water may be expected from use on food crops.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Titanium dioxide may be used in non-pesticide products such as paints, printing inks, paper and plastic products around the home. It has also been approved for use in drugs (21 CFR 73.1575) and in cosmetics (21 CFR 73.2575 and 73.3126). Additionally, titanium dioxide may be used as an inert ingredient in pesticides that include residential uses; however based on the discussion in Unit IV.B., a quantitative residential exposure assessment for titanium dioxide was not conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Because titanium dioxide does not have a toxic mode of action or a mechanism of toxicity, this provision does not apply.

D. Safety Factor for Infants and Children

Due to titanium dioxide's low potential hazard and the lack of a hazard endpoint, it was determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate for titanium dioxide. For the same reasons that a quantitative risk assessment based on a safety factor approach is not appropriate for titanium dioxide, an FQPA SF is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on titanium dioxide, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to titanium dioxide under reasonable foreseeable circumstances. Therefore, the exemption from tolerance under 40 CFR 180.920 for residues of titanium dioxide, when used as an inert ingredient in pesticide formulations is safe under FFDCA section 408.

V. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, EPA is amending the exemption from the requirement of a tolerance in 40 CFR 180.920 for residues of titanium dioxide (CAS Reg. No. 13463–67–7) when used as an inert ingredient (carrier) in pesticide formulations.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 11, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920, revise the inert ingredient ''Titanium dioxide (CAS Reg. No. 13463–67–7)'' in the table to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
. . .	. . .	. . .
Titanium dioxide (CAS Reg. No. 13463–67–7)		Pigment, colorant, carrier.
. . .	. . .	. . .

[FR Doc. 2018–16470 Filed 7–31–18; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[EPA–HQ–OLEM–2018–0518; FRL–9981–52–OLEM]

RIN 2050–AG66

Vacatur Response—CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms; FARM Act Amendments to CERCLA Release Notification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing regulatory provisions associated with the administrative reporting exemption under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, and under the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. These revisions implement the vacatur of the CERCLA and EPCRA administrative reporting exemption regulations ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). This rule also incorporates CERCLA revisions enacted by the Fair Agricultural Reporting Method (FARM) Act.

DATES: This final rule is effective on August 1, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2018–0518. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744. For more information on EPA's Docket Center Reading Room, see *https://www.epa.gov/dockets/epa-docket-center-reading-room.*

FOR FURTHER INFORMATION CONTACT: Office of Emergency Management, mail code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Alison Kent (202) 564–7645, *kent.alison@epa.gov* or Sicy Jacob (202) 564–8019, *jacob.sicy@epa.gov;* or contact the EPCRA, RMP & Oil Information Center toll free at 1–800–424–9346 or (703) 348–5070 in the Washington, DC area. The call center operates from 10:00 a.m. to 5:00 p.m. EST Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

A list of entities that could be affected by this final rule include, but are not necessarily limited to:

NAICS Description	NAICS Code	Examples of potentially affected entities
Crop Production	111	Facilities that manage crop production.
Animal Production and Aquaculture	112	Facilities that manage animal production and aquaculture.

This table is not intended to be exhaustive, but rather provide a guide for readers regarding the types of entities that EPA is aware could be involved in the activities affected by this action. However, other types of entities not listed in this table could be affected by this final rule. To determine whether your entity is affected by this action, you should carefully examine the applicability criteria found in title 40 of the Code of Federal Regulations (CFR) parts 302 and 355. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Why is EPA issuing this action?

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause to issue this final rule without prior proposal and opportunity for comment because these revisions undertake the ministerial tasks of removing CERCLA and EPCRA regulatory provisions vacated by the D.C. Circuit and adding provisions to the CERCLA regulations consistent with the FARM Act's legislative amendments to CERCLA section 103.

As a matter of law, the orders issued by the D.C. Circuit on April 11, 2017 and May 2, 2018 vacated the final rule titled ''CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms'' (73 FR 76948, December 18, 2008), herein referred to as the ''2008 final rule,'' which was issued by EPA under CERCLA, 42 U.S.C. 9601 *et seq.* and EPCRA, 42 U.S.C. 11001 *et seq.* It is, therefore, unnecessary to provide notice and an opportunity for comment on this action, which merely carries out the court's orders by removing the administrative reporting exemption and related definitions of ''farm'' and ''animal waste'' from the CERCLA regulations at 40 CFR part 302 and the EPCRA regulations at 40 CFR part 355.

Prior to the court mandate vacating the 2008 final rule, Congress passed the FARM Act, which was signed into law by the President on March 23, 2018. The FARM Act amended CERCLA section 103 (42 U.S.C. 9603) to exempt reporting of air emissions from animal waste (including decomposing animal waste) at farms. This final rule revises the CERCLA regulations at 40 CFR part 302 to be consistent with the FARM Act's amendments to CERCLA section 103 by adding the reporting exemption for air emissions from animal waste at farms and adding definitions of ''farm'' and ''animal waste'' from the FARM Act. EPA finds that it is unnecessary to provide notice and an opportunity to comment on these revisions because this final rule merely codifies the FARM Act's legislative amendments to CERCLA.

In addition, EPA finds that it has good cause to make these revisions immediately effective under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). EPA has determined that there is good cause for making this final rule effective immediately because this action merely

implements court orders vacating certain regulatory provisions and codifies statutory amendments to CERCLA. Delaying the effectiveness of this rulemaking would prolong the period of time between the change in the law (*i.e.,* the court's mandate and the FARM Act's amendments to CERCLA) and the corresponding update to the regulations. Minimizing that time period would reduce the possibility of confusion for the regulated community and the public.

C. What is the Agency's authority for taking this action?

These regulations are promulgated under the authority of section 102(a), 103, 104, and 115 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.,* as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. The Agency also relies on section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.,* as authority to issue regulations governing EPCRA section 304 notification requirements, and EPCRA section 328 for general rulemaking authority. Finally, the Agency relies on the Consolidated Appropriations Act (Omnibus Bill), which was signed into law on March 23, 2018. Title XI of Division S of the Omnibus Bill, known as the Fair Agricultural Reporting Method (FARM) Act exempts the reporting of air emissions from animal waste (including decomposing animal waste) at a farm under CERCLA section 103(e).

II. Background of the Final Rule

A. Overview

Section 103 of CERCLA requires the person in charge of a vessel or facility to immediately notify the National Response Center (NRC) when there is a release of a hazardous substance, as defined under CERCLA section 101(14), in an amount equal to or greater than the reportable quantity for that substance within a 24-hour period. In addition to these CERCLA reporting requirements, EPCRA section 304 requires owners or operators of certain facilities to immediately notify state and local authorities when there is a release of an extremely hazardous substance, as defined under EPCRA section 302, or of a CERCLA hazardous substance in an amount equal to or greater than the reportable quantity for that substance within a 24-hour period.

B. December 2008 Administrative Reporting Exemption for Farms

On December 18, 2008 (73 FR 76948), EPA issued an administrative reporting exemption for air releases from animal waste at farms. Specifically, the rule exempted all farms from CERCLA's reporting requirements for air releases of any hazardous substance from animal waste. Under EPCRA, the 2008 final rule exempted reporting of such releases if the farm had fewer animals than a large concentrated animal feeding operation, as defined by the Clean Water Act. Documents related to this rulemaking are located at *www.regulations.gov,* docket number EPA–HQ–SFUND–2007–0469.

The 2008 administrative reporting exemption was ultimately struck down, or vacated, by the U.S. Court of Appeals for the District of Columbia Circuit in *Waterkeeper Alliance* v. *EPA,* 853 F.3d 527 (D.C. Cir. 2017). In vacating the rule, the court found that the Agency could not rely on general rulemaking authority or a *de minimis* exception to issue an administrative reporting exemption for this category of releases, particularly where the Agency had failed to identify any statutory ambiguity as the basis for its interpretation of the reporting requirements. The court issued a mandate effectuating the vacatur on May 2, 2018.

C. FARM Act and Legislative Amendments to CERCLA

On March 23, 2018 the Consolidated Appropriations Act (Omnibus Bill) was signed into law. Title XI of Division S of the Omnibus Bill, known as the FARM Act, exempts the reporting of air emissions from animal waste at a farm under CERCLA section 103(e). *See* Fair Agricultural Reporting Method Act, Public Law 115–141, Sections 1101–1103 (2018).

III. Vacatur and Court Mandate: Revisions to CERCLA and EPCRA Regulations

Due to the D.C. Circuit's issuance of its mandate vacating the 2008 final rule, EPA is amending the CERCLA and EPCRA regulations to remove any provisions added in the 2008 final rule. These regulations are amended by removing the administrative reporting exemption for air releases of a hazardous substance from animal waste at farms at 40 CFR 302.6(e)(3) and 355.31(g) and (h). EPA is also removing the definitions of ''animal waste'' and ''farm'' from 40 CFR 302.3 and 355.61.

IV. FARM Act: Revisions to CERCLA Regulations

The FARM Act amended CERCLA section 103 by providing an exemption from reporting air emissions from animal waste (including decomposing animal waste) at a farm. In this final rule, EPA is adding this exemption to the CERCLA release reporting regulation in 40 CFR 302.6 as well as the definitions of ''animal waste'' and ''farm'' to 40 CFR 302.3. Due to the FARM Act, farms remain exempt from CERCLA release reporting requirements despite the D.C. Circuit's vacatur of the 2008 final rule.

V. Effective Date

This final rule will become effective immediately upon publication in this **Federal Register**.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and therefore was not submitted to the Office of Management and Budget (OMB) for review. In addition, this action is not considered an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action, because this action is not significant under Executive Order 12866. This action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, therefore, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et* seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (Pub. L. 104–4). This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). 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. Because this final rule is not subject to review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Congressional Review Act

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section I.B of the preamble, including the basis for that finding. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 355

Environmental protection, Chemicals, Disaster assistance, Hazardous substances, Hazardous waste, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund.

Dated: July 23, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, EPA is amending 40 CFR parts 302 and 355 as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

■ 2. Section 302.3 is amended by revising the definitions for ''Animal waste'' and ''Farm'' to read as follows:

§ 302.3 Definitions.

* * * * *

Animal waste means feces, urine, or other excrement, digestive emission, urea, or similar substances emitted by animals (including any form of livestock, poultry, or fish). The term ''animal waste'' includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with such waste.

* * * * *

Farm means a site or area (including associated structures) that—

(1) Is used for—

(i) The production of a crop; or

(ii) The raising or selling of animals (including any form of livestock, poultry, or fish); and

(2) Under normal conditions, produces during a farm year any agricultural products with a total value equal to not less than $1,000.

* * * * *

■ 3. Section 302.6 is amended by revising paragraph (e)(3) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(e) * * *

(3) Air emissions from animal waste (including decomposing animal waste) at a farm.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 4. The authority citation for part 355 continues to read as follows:

Authority: Sections 302, 303, 304, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11002, 11003, 11004, 11045, 11047, 11048, and 11049).

§ 355.31 [Amended]

■ 5. Section 355.31 is amended by removing paragraphs (g) and (h).

§ 355.61 [Amended]

■ 6. Section 355.61 is amended by removing the definitions for ''Animal waste'' and ''Farm''.

[FR Doc. 2018–16379 Filed 7–31–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180517485–8649–01]

RIN 0648—XG262

Atlantic Highly Migratory Species; Adjustments to 2018 North and South Atlantic Swordfish Quotas

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

ACTION: Temporary final rule.

SUMMARY: NMFS adjusts the North and South Atlantic swordfish baseline quotas for 2018 based on available underharvest from the 2017 adjusted U.S. quotas. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective August 31, 2018, through December 31, 2018.

ADDRESSES: Supporting documents, such as the 2012 and 2007 Environmental Assessments (EA) and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan and its amendments described below, may be downloaded from the HMS website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species.* These documents also are available upon request from Chanté Davis or Steve Durkee at the telephone numbers below.

FOR FURTHER INFORMATION CONTACT: Chanté Davis, (301) 427–8503, or, Steve Durkee, (202) 670–6637.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of ATCA, 16 U.S.C. 971 *et seq.,* and the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.,* governing the harvest of swordfish by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section

635.27(c) describes the quota adjustment process for both North and South Atlantic swordfish. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quotas.

The North Atlantic swordfish quota adjustment process was previously analyzed in the EA, Final Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) that were prepared for the 2012 Swordfish Quota Adjustment Rule (July 31, 2012; 77 FR 45273). The South Atlantic swordfish quota adjustment process was previously analyzed in the EA, RIR, and FRFA that were prepared for the 2007 Swordfish Quota Specification Final Rule (October 5, 2007; 72 FR 56929). In the 2016 North and South Atlantic Swordfish Quotas Adjustment Final Rule (July 26, 2016, 81 FR 48719), after inviting and considering public comment on the issue, NMFS in the final rule determined it would no longer issue proposed and final specifications/rules for North and South Atlantic swordfish quotas adjustments in cases where the quota adjustment follows previously codified and analyzed formulas. As a result, in 2017, NMFS issued a temporary final rule to adjust the quota for the 2017 North and South Atlantic Swordfish fishery (September 18, 2017, 82 FR 43500). Consistent with the determination made in the 2016 final rule, NMFS is issuing this temporary final rule to adjust the North and South Atlantic swordfish quotas for 2018.

North and South Atlantic Swordfish Annual Quota and Adjustment Process

North Atlantic Swordfish

At the 2017 ICCAT annual meeting, ICCAT finalized Recommendation 17–02, which slightly reduced the overall North Atlantic swordfish TAC from 10,300.8 metric tons (mt) dressed weight (dw) to 9,924.8 mt dw (376 .0 mt dw reduction) through 2018 in response to a recommendation by ICCAT's Standing Committee for Research and Statistics (SCRS) given updated stock status information While the overall TAC was reduced, the U.S. baseline quota was maintained at 2,937.6 mt dw (3,907 mt whole weight (ww)) per year, as was the allowable underharvest carryover of 15 percent of a Contracting Party's baseline quota. This means that the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest from 2017 to 2018. Additionally, under Recommendation 17–02, the United States is no longer required to transfer 18.8 mt dw to Mauritania, as it has under previous recommendations since 2013 (ICCAT Recommendation 13–02).

Per Recommendation 17–02, the 2018 U.S. North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). The 2017 North Atlantic swordfish landings and dead discards were 1,011.9 mt dw, leaving an underharvest of 1,925.7 mt dw. This underharvest exceeds the 440.6 mt dw underharvest carryover limit allowed under Recommendation 17–02; thus, NMFS is carrying forward 440.6 mt dw, which is the maximum allowed. Because Recommendation 17–02 removed the transfer to Mauritania, NMFS is not transferring any quota to any country. Therefore, the resulting final adjusted North Atlantic swordfish quota for the 2018 fishing year is 3,378.2 mt dw (2,937.6 baseline quota + 440.6 overharvest carryover − 0 transfer to another country = 3,378.2 mt dw). From that adjusted quota, 50 mt dw will be allocated to the reserve category for inseason adjustments and research, and 300 mt dw will be allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at 50 CFR 635.27(c)(1)(i). The remainder, 3,028.2 mt dw, would be allocated to the directed category (3,378.2 adjusted quota − 50 to reserve − 300 to the incidental category = 3,028.2 mt dw), which would be split equally between two seasons in 2018 (January through June and July through December) (Table 1).

South Atlantic Swordfish

In 2017, ICCAT also finalized Recommendation 17–03, which maintained the overall South Atlantic swordfish TAC at 10,526.3 mt dw (14,000 mt ww) through 2018, and maintained the U.S. allocation at 75.2 mt dw (100 mt ww). Recommendation 17–03 continues to limit the amount of South Atlantic swordfish underharvest that can be carried forward from one year to the next; the United States may carry forward up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 17–03 also continues to require the United States to transfer a total of 75.2 mt dw (100 mt ww) to other countries. These transfers are 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

U.S. fishermen landed no South Atlantic swordfish in 2017. The adjusted 2017 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2018. NMFS is carrying forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota is then reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2018 fishing year (Table 1).

TABLE 1—2017 AND 2018 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

	2017	2018
North Atlantic Swordfish Quota (mt dw):		
Baseline Quota	2,937.6	2,937.6
International Quota Transfer	(−) 18.8 (to Mauritania)	0
Total Underharvest from Previous Year	2,215.0	1,925.7
Underharvest Carryover from Previous Year+	(+) 440.6	(+) 440.6
Adjusted Quota	3,359.4	3,378.2
Quota Allocation:		
Directed Category	3,009.4	3,028.2
Incidental Category	300	300
Reserve Category	50	50
South Atlantic Swordfish Quota (mt dw):		
Baseline Quota	75.2	75.2
International Quota Transfers*	(−) 75.2	(−) 75.2
Total Underharvest from Previous Year	75.1	75.1
Underharvest Carryover from Previous Year+	75.1	75.1

TABLE 1—2017 AND 2018 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS—Continued

	2017	2018
Adjusted quota	75.1	75.1

+ Allowable underharvest carryover is capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.

* Under Recommendation 17–03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

Classification

The Assistant Administrator for NMFS (AA) has determined that this temporary final rule is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law. Pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the AA finds that it would be unnecessary and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the reasons described below.

In the 2016 North and South Atlantic Swordfish Quota Adjustment Rule (81 FR 48719, July 26, 2016), NMFS announced the intent to no longer issue proposed and final specifications/rules for North and South Atlantic swordfish quota adjustments in cases where the quota adjustment simply follows previously codified and analyzed formulas. Public comments on this process change were generally supportive; as a result, in 2017, NMFS issued a temporary final rule to adjust the swordfish quota.

This action to adjust the 2018 North and South Atlantic Swordfish quotas applies the formula that the public received notice of in the 2016 North and South Atlantic Swordfish Quota Adjustment Rule, using the best available data regarding 2017 catch and underharvest, and calculating allowable underharvest consistent with ICCAT recommendations. The rulemaking for the 2016 North and South Atlantic Swordfish Quota Adjustment Rule specifically provided prior notice of, and accepted public comment on, these formulaic quota adjustment processes and the manner in which they occur. The application of this formula in this action does not have discretionary aspects requiring additional agency consideration and thus it would be unnecessarily duplicative to accept public comment for this action. Because there are no new quotas for 2018 and the quota formula is the same as in previous years, NMFS is issuing this temporary final rule to adjust the North and South Atlantic swordfish quotas for 2018.

This action is being taken under § 635.27(c) and is exempt from review under Executive Order 12866.

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

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

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 26, 2018.

Samuel D. Rauch, III,

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

[FR Doc. 2018–16388 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG114

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian district (WAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2018 total allowable catch (TAC) of Pacific ocean perch in the WAI allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 27, 2018, through 2400 hrs, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2018 TAC of Pacific ocean perch, in the WAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 161 metric tons by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the WAI by vessels participating in the BSAI trawl limited access fishery. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Pacific ocean perch directed fishery in the WAI for vessels participating in the BSAI trawl

limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 26, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 27, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–16438 Filed 7–27–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 148
Wednesday, August 1, 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 45 and 46

[Docket No. RM18–15–000]

Interlocking Officers and Directors; Requirements for Applicants and Holders

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise its regulations related to interlocking officers and directors to clarify and update the requirements for both applicants and holders. In particular, the Commission proposes to update its regulations to reflect statutory changes to the circumstances in which an applicant who would otherwise require Commission authorization to hold an interlocking position need not do so. The Commission also proposes to revise its regulations to clarify its position on late-filed applications and informational reports. The Commission further proposes to revise its regulations to clarify that an interlock holder is not required to file a notice of change when merely changing positions within a holding company. Additionally, the Commission proposes to revise its regulations to state that applicants do not need to list in their applications public utilities that do not have officers or directors. Next, the Commission proposes to revise its regulations with regard to public utilities owned by a natural person. Finally, the Commission proposes to update its regulations to remove a section containing definitions and phrases now rendered obsolete.

DATES: Comments are due October 1, 2018.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:
Amery Poré (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6312
Mary Ellen Stefanou (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8989

SUPPLEMENTARY INFORMATION:

1. Section 305(b) of the Federal Power Act (FPA) [1] prohibits individuals from concurrently holding positions as an officer or director of more than one public utility; or concurrently holding the positions of officer or director of a public utility and of an entity authorized by law to underwrite or participate in the marketing of public utility securities; [2] or concurrently holding the positions of officer or director of a public utility and a company supplying electrical equipment to such public utility, unless the holding of such positions has been authorized by the Commission upon a showing that neither public nor private interests will be adversely affected.[3] Congress enacted section 305(b) to prevent certain perceived abuses with holding companies, including (1) excessive charges to subsidiary public utility companies resulting from the lack of arm's length bargaining or the restraint of free and independent competition; (2) allocation of charges for goods and services among subsidiary companies in different States so as to frustrate State regulation; (3) control of subsidiary public utility companies through disproportionately small investment resulting in account practices, and rate, dividend and other policies that complicated and obstructed State regulation; and (4) a general lack of economy of management and operation of public utilities, a lack of efficiency and adequacy of services or a lack of effective public regulation and a lack of economies in raising capital.[4]

2. The Commission implemented Congress' mandate in part 45 of the Commission's regulations.[5] Consistent with the statute, part 45 provides that an application or informational filing be filed, and authorization granted, before a person may hold otherwise proscribed interlocking positions. Part 46 of the Commission's regulations, which implements section 305(c) of the FPA,[6] describes the annual filing requirements for those holding interlocking positions, including the relevant definitions.

3. As described below, we propose revisions to parts 45 and 46 of our regulations.[7]

I. Discussion

4. On October 27, 2016, Commission staff issued its 2016 Biennial Staff Memo Concerning Retrospective Analysis of Existing Rules,[8] in which it identified certain Commission regulations as ripe for evaluation, including 18 CFR part 45. The Edison Electric Institute (EEI) submitted comments in support of the Commission's suggested revisions to 18

[1] 16 U.S.C. 825d(b) (2012).

[2] However, section 305(b)(2) of the FPA, 16 U.S.C. 825d(b)(2), exempts from this prohibition certain interlocks between public utilities and a financial institution that is authorized to underwrite or participate in the marketing of public utility securities.

[3] 16 U.S.C. 825d(b).

[4] Title I, Sec. 1, of the Public Utility Act of 1935 (49 Stat. 803, 15 U.S.C. 79a). Title I was the Public Utility Holding Company Act of 1935. Title II became Parts II and III of the Federal Power Act, which include section 305(b).

[5] 18 CFR part 45 (2017).

[6] 16 U.S.C. 825d(c).

[7] 18 CFR part 46. Section 305(c) of the FPA, as relevant here, requires that any person holding interlocking positions in both a public utility and any of the entities listed in section 305(c)(2) of the FPA file an annual report listing such interlocking positions. 16 U.S.C. 825d(c). The Commission implements section 305(c) in part 46 of its regulations and through its FERC Form No. 561.

[8] 2016 Biennial Staff Memo Concerning Retrospective Analysis of Existing Rules, Docket No. AD12–6–002 (published Oct. 27, 2016) (81 FR 76542, Nov. 3, 2016).

CFR part 45 and proposed additional revisions.[9]

5. Based on our review of our regulations, as well as our review of the comments submitted by EEI, we propose the following changes to the regulations in part 45, as well as certain revisions to part 46.

6. Section 45.2 of the Commission's regulations describes the types of interlocking positions that require Commission authorization, including those between a public utility and entities authorized by law to underwrite or participate in the marketing of public utility securities.[10] However, in 1999, Congress amended section 305(b)(2) of the FPA to provide that an applicant for certain interlocking positions is no longer required to obtain Commission authorization to hold such positions.[11] As a result, the Commission proposes to revise § 45.2 of its regulations to add that an applicant for an interlocking position between a public utility and a ''bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of public utility securities,'' [12] does not need Commission authorization when:

(1) He/she does not participate in any deliberations or decisions of the public utility regarding the selection of the bank, trust company, banking association, or firm to underwrite or participate in the marketing of securities of the public utility, if he/she serves as an officer or director of a bank, trust company, banking association, or firm that is under consideration in the deliberation process;

(2) the bank, trust company, banking association, or firm of which he/she is an officer or director does not engage in the underwriting of, or participate in the marketing of, securities of the public utility of which he/she holds the position of officer or director;

(3) the public utility for which he/she serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

(4) the issuance of securities of the public utility for which he/she serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.[13]

7. Sections 45.3 and 45.9 of the Commission's regulations require applications and informational filings be filed with the Commission before an applicant holds any interlocking positions within the purview of section 305. The Commission's regulations currently provide in § 45.3(a) that ''late-filed applications will be denied'' and in § 45.9(b) that ''[f]ailure to timely file the informational report will constitute a failure to satisfy this condition and will constitute automatic denial.''

8. The Commission expects its regulations to be followed. However, the Commission recognizes that good faith errors and oversights may occasionally result in the inadvertent violation of the timing of section 305(b)'s filing requirements. The Commission believes that it is not in the public interest to deny otherwise-qualified applicants' late-filed applications and informational filings made under these regulations when the late filing is due solely to such good faith errors and oversights alone. Late-filed applications do not impede the Commission's ability to decide the case. The statutory standard for authorization to hold otherwise-proscribed interlocks requires the Commission to determine whether the holding of otherwise-proscribed interlocks adversely affects neither public nor private interests, and that determination typically would not depend solely on the date an applicant happens to file.[14] Nor would applications that are filed late solely due to good faith errors and oversights implicate the abuses that Congress attempted to prevent in promulgating section 305. Further, denying late-filed applications could cause unnecessary inefficiencies for companies. Therefore, the Commission proposes to delete the above-quoted language, and to replace it with language providing for consideration of late-filed applications for interlocking positions on a case-by-case basis.[15]

9. The Commission expects that applicants will be attentive to their obligation to timely file for the required authorizations and make every effort to ensure they act in accordance with the statutory directives in section 305(b). In cases where occasional errors and oversights occur, the Commission expects that those errors and oversights will be expeditiously identified and rectified, and applications to hold interlocking director positions promptly filed. The Commission would look unfavorably on section 305(b) applications where an applicant has not been attentive to his/her obligation to file for the required authorization.

10. The Commission proposes to revise §§ 45.4 and 45.5 of its regulations to clarify that supplemental applications and notices of change need not be filed in the case of a person already authorized to hold interlocks identified in § 45.9(a) who may assume new or different positions that are still among those identified by § 45.9(a).[16] For example, a promotion within a holding company system would not require an interlock holder to file a notice of change. Such changes in positions among related public utilities are already reported in the annual Form No. 561s, and separate filings under § 45.4 or § 45.5 are unnecessary. However, the Commission clarifies that, for such interlocking positions, a holder would still be required to file a notice of change when he/she no longer holds any interlocking positions within the scope of the statute and regulations. No longer holding any interlocking positions would constitute a ''material or substantial change.''

11. The Commission proposes to revise § 45.8(c)(1) of its regulations to state that applicants under part 45 do not need to list in their applications those public utilities that do not have officers or directors. The Commission recognizes the growing complexity of corporate structures. Thus, in the interest of reducing regulatory burdens, the Commission proposes to eliminate the requirement that applications under part 45 list those public utilities that do not have officers or directors.

12. The Commission proposes to revise § 45.9 of its regulations to add the word ''person'' when defining the corporate relationships within the scope of the automatic authorizations addressed in § 45.9. The Commission would thus recognize that public utilities can be owned not just by a corporate entity but by a natural person, and the regulations should reflect this possibility.

13. Finally, the Commission proposes to update its regulations in part 46 to remove § 46.2(b), because the definitions were rendered obsolete as a result of the enactment of the Energy

[9] *See* Edison Electric Institute Comments, Docket No. AD12–6–002 (Nov. 28, 2016).

[10] 18 CFR 45.2(b)(2).

[11] *See* Public Law 106–102, sec. 737, 113 Stat. 1338, 1479 (1999).

[12] 18 CFR 45.2(b)(2).

[13] *See also* 16 U.S.C. 825d(b)(2).

[14] 16 U.S.C. 825d(b)(1).

[15] The public utilities whose officers and directors are subject to the statutory directive in section 305(b) to file, as regulated entities themselves subject to and thus sensitive to the requirements of the FPA, would be well-advised to and should make every effort to ensure that their officers and directors, in turn, act in accordance with the statutory directives in section 305(b).

[16] If an applicant has a pending application, however, we would expect that the applicant would supplement his/her application should a change occur while the application is pending. In contrast, as noted above, an applicant who has been granted authorization and no longer has a pending application is differently situated, and any change in the positions held can be addressed in the next Form No. 561.

Policy Act of 2005 and the concurrent repeal of the Public Utility Holding Company Act of 1935.[17] The Commission notes that § 46.2(b) currently references the definition of ''holding company system'' and ''registered holding company system'' in the Public Utility Holding Company Act (PUHCA) of 1935.[18] However, the Commission recognizes that the Energy Policy Act of 2005 repealed the PUHCA of 1935.[19] Thus, the Commission proposes to remove § 46.2(b). The Commission also proposes to update part 46 to change ''Rural Electrification Administration'' to ''Rural Utilities Service'' to reflect the name change of that organization.

II. Information Collection Statement

14. The Paperwork Reduction Act (PRA)[20] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to 10 or more persons or contained in a rule of general applicability. OMB's regulations[21] require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

15. The revisions proposed in this NOPR would clarify and update the requirements[22] for those seeking and holding interlocking positions. The Commission anticipates that the revisions, once effective, would reduce regulatory burdens. The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[23]

16. While the Commission expects that the regulatory revisions proposed herein will reduce the burdens on affected entities, the Commission nonetheless solicits public comments regarding the accuracy of the burden and cost estimates below.

17. *Burden Estimate:*[24] The estimated burden and cost for the requirements contained in this NOPR follow.

FERC FORM NO. 520

[Application for authority to hold interlocking directorate positions]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response[25] (4)	Total annual burden hours (total annual cost) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Full	16	1	16	50 hrs.; $3,950	800 hrs.; $63,200	$3,950
Informational	500	1	500	8 hrs.; $632	4,000 hrs.; $316,000	632
Notice of Change	100	1	100	0.25 hrs.; $19.75	25 hrs.; $1,975	19.75
Total					4,825 hrs.; $381,175	

Title: FERC–520 (Application for Authority to Hold Interlocking Directorate Positions).

OMB Control No.: 1902–0083.

Abstract: The FPA, as amended, mandates federal oversight and approval of certain electric corporate activities to ensure that neither public nor private interests are adversely affected. Accordingly, the Commission's regulations prescribe related information filing requirements to achieve this goal. Such filing requirements are found in 18 CFR parts 45 and 46.

Overview of the Data Collection. FERC–520 provides information related to complex electric corporate activities, in particular, the holding of interlocking positions, and thereby serves to safeguard public and private interests, as the FPA requires.

FERC–520 is divided into two types of applications: Full and informational. The full application, as specified in 18 CFR 45.8, implements the FPA requirement under section 305(b) that it is unlawful for any person to concurrently hold the positions of officer or director of more than one public utility; or a public utility and a financial institution that is authorized to underwrite or participate in the marketing of public utility securities; or a public utility and an electrical equipment supplier to such public utility, unless authorized by the Commission. In order to obtain authorization, an applicant must demonstrate that neither public nor private interests will be adversely affected by the holding of the positions. The full application provides the Commission with information about any interlocking position for which the applicant seeks authorization including, but not limited to, a description of duties and the estimated time devoted to the position.

An informational (abbreviated) application, as specified in 18 CFR 45.9, allows an applicant to receive automatic authorization for an interlocked position upon receipt of the filing by the Commission. The informational application applies only to those individuals who seek authorization as: (1) An officer or director of two or more public utilities where the same holding company owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors; (2) an officer or director of two public utilities, if one utility is owned, wholly or in part, by the other

[17] *See* Energy Policy Act of 2005, Public Law 109–58, 1261–77, 119 Stat. 594, 972–78 (2005).

[18] 16 U.S.C. 79a *et seq.*

[19] EPAct 2005, Public Law 109–58, 1263.

[20] 44 U.S.C. 3507(d).

[21] 5 CFR part 1320.

[22] 18 CFR parts 45 and 46.

[23] 44 U.S.C. 3507(d).

[24] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3

[25] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's 2018 annual average (for salary plus benefits) of $164,820, the average hourly cost is $79/hour.

and, as its primary business, owns or operates transmission or generation facilities to provide transmission service or electric power for sale to its owners; or (3) an officer or director of more than one public utility, if such person is already authorized under part 45 to hold different positions as officer or director of those utilities where the interlock involves affiliated public utilities.

FERC–520 also includes the requirement to file a notice of change if there are new positions or changes to the positions held. The Commission is proposing to revise its requirements and no longer require a notice of change when a person is merely changing positions within a holding company system. This proposal is expected to reduce the number of filed notices of change by 50 percent annually (from 200 filings to 100 filings) and to reduce the corresponding total burden.

Type of Respondents: Individuals who plan to concurrently become or concurrently are officers or directors of public utilities and of certain other entities must request authorization to hold such interlocking positions by submitting a FERC–520.

Internal Review: The Commission has reviewed the information collection requirements and has determined that certain changes are needed and that the remaining requirements are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], email: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873. Comments concerning the collection of information and the associated burden estimate(s) may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Please refer to FERC–520, OMB Control No. 1902–0083 in your submission.

III. Environmental Analysis

18. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[26] We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under 380.4(a) of the Commission's regulations, which provides a categorical exemption for approval of ''action under section [ ] . . . 305 of the FPA relating to . . . interlocking directorates, ...''[27]

IV. Regulatory Flexibility Act

19. The Regulatory Flexibility Act of 1980 (RFA)[28] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small entity.[29] These standards are provided in the SBA regulations at 13 CFR 121.201.[30]

20. This proposed rule, if adopted, would apply to those individuals seeking to hold and those currently holding interlocking positions. In order to obtain authorization, an applicant must demonstrate that neither public nor private interests will be adversely affected by the holding of the interlocking positions.

21. There are an estimated 16 respondents who could file full applications over the course of a year, who would provide one response annually with an estimated time commitment of 50 hours per response, and a resulting estimated cost of $3,950.00 per respondent. There are an estimated 500 respondents who could file informational applications over the course of a year, who would provide one response annually with an estimated time commitment of 8 hours per response, and a resulting estimated cost of $632.00 per respondent. In addition, there are an estimated 100 respondents who could file a notice of change annually with an estimated time commitment of 0.25 hours, and a resulting cost of $19.75 per respondent. Therefore the average annual cost for each of the 616 respondents is $618.79. That cost is not significant. More importantly, this proposed rule reduces industry cost by eliminating the need for the filing of some notices of change.

22. The Commission certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

V. Comment Procedures

23. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice of proposed rulemaking to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due October 1, 2018. Comments must refer to Docket No. RM18–15–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

24. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

25. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

26. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VI. Document Availability

27. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

28. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary

[26] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[27] 18 CFR 380.4(a)(16).

[28] 5 U.S.C. 601–12.

[29] 13 CFR 121.101.

[30] 13 CFR 121.201. *See also* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (effective Feb. 26, 2016), *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

29. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects

18 CFR Part 45

Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 46

Antitrust, Electric utilities, Holding companies, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: July 19, 2018.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 45 and 46, chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 45—APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 3 CFR 142.

■ 2. Add § 45.2(d) to read as follows:

§ 45.2 Positions requiring authorization.

* * * * *

(d) A person that holds or proposes to hold an interlocking position as officer or director of a public utility and of a corporation described by paragraph (b)(2) of this section shall not require authorization to hold such positions in the following circumstances—

(1) The person does not participate in any deliberations or decisions of the public utility regarding the selection of the bank, trust company, banking association, or firm to underwrite or participate in the marketing of securities of the public utility, if the person serves as an officer or director of a bank, trust company, banking association, or firm that is under consideration in the deliberation process;

(2) The bank, trust company, banking association, or firm of which the person is an officer or director does not engage in the underwriting of, or participate in the marketing of, securities of the public utility of which the person holds the position of officer or director;

(3) The public utility for which the person serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

(4) The issuance of securities of the public utility for which the person serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.

■ 3. Revise § 45.3(a) to read as follows:

§ 45.3 Timing of filing application.

(a) The holding of positions within the purview of section 305(b) of the Act shall be unlawful unless the holding shall have been authorized by order of the Commission. Nothing in this part shall be construed as authorizing the holding of positions within the purview of section 305(b) of the Act prior to order of the Commission on application therefor. Applications must be filed and authorization must be granted prior to holding any interlocking positions within the purview of section 305(b) of the Act; the Commission will consider late-filed applications on a case-by-case basis. The term ''holding,'' as used in this part, shall mean acting as, serving as, voting as, or otherwise performing or assuming the duties and responsibilities of officer or director within the purview of section 305(b) of the Act.

* * * * *

■ 4. Add § 45.4(c) to read as follows:

§ 45.4 Supplemental applications.

* * * * *

(c) *Changes in interlocking positions within the scope of § 45.9.* Notwithstanding paragraphs (a) and (b) of this section, in the case of interlocking positions that are identified in § 45.9(a), a filing under this section will not be required if the only change to be reported is holding a different or additional interlocking position which is identified in § 45.9(a).

■ 5. Revise § 45.5(b) to read as follows:

§ 45.5 Supplemental information.

* * * * *

(b) *Notice of changes.* In the event of the applicant's resignation, withdrawal, or failure of reelection or appointment in respect to any of the interlocking positions for which authorization has been granted by the Commission, or in the event of any other material or substantial change therein, the applicant shall, within 30 days after any such change occurs, give notice thereof to the Commission setting forth the position, corporation, and date of termination therewith, or other material or substantial change. In the case of interlocking positions that are identified in § 45.9(a), a notice of change under this section will not be required if the only change to be reported is holding a different or additional interlocking position which is identified in § 45.9(a).

* * * * *

■ 6. Revise § 45.8(c)(1) to read as follows:

§ 45.8 Contents of application.

* * * * *

(c) * * *

(1) Name of utility, unless said utility does not have officers or directors.

* * * * *

■ 7. Revise § 45.9(a)(1) and (b) to read as follows:

§ 45.9 Automatic authorization of certain interlocking positions.

(a) * * *

(1) Officer or director of one or more other public utilities if the same holding company or person owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors;

* * * * *

(b) *Conditions of authorization.* As a condition of authorization, any person authorized to hold interlocking positions under this section must submit, prior to performing or assuming the duties and responsibilities of the position, an informational report in accordance with paragraph (c) of this section, unless that person is already authorized to hold interlocking positions of the type governed by this section. The Commission will consider failures to timely file the informational report on a case-by-case basis.

* * * * *

PART 46—PUBLIC UTILITY FILING REQUIREMENTS AND FILING REQUIREMENTS FOR PERSONS HOLDING INTERLOCKING POSITIONS

■ 8. The authority citation for part 46 continues to read as follows:

Authority: 16 U.S.C. 792–828c; 16 U.S.C. 2601–2645; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142.

■ 9. In § 46.2, revise paragraph (a), remove and reserve paragraph (b), and revise paragraphs (c) and (e) to read as follows:

§ 46.2 Definitions.

* * * * *

(a) *Public utility* has the same meaning as in section 201(e) of the Federal Power Act. Such term does not

include any rural electric cooperative which is regulated by the Rural Utilities Service of the Department of Agriculture or any other entities covered in section 201(f) of the Federal Power Act.

* * * * *

(c) *Purchaser* means any individual or corporation within the meaning of section 3 of the Federal Power Act who purchases electric energy from a public utility. Such term does not include the United States or any agency or instrumentality of the United States or any rural electric cooperative which is regulated by the Rural Utilities Service of the Department of Agriculture.

* * * * *

(e) *Entity* means any firm, company, or organization including any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. Such term does not include *municipality* as defined in section 3 of the Federal Power Act and does not include any Federal, State, or local government agencies or any rural electric cooperative which is regulated by the Rural Utilities Service of the Department of Agriculture.

* * * * *

[FR Doc. 2018–16463 Filed 7–31–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2017–0366; FRL–9981–16]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 145 chemical substances which were the subject of premanufacture notices (PMNs). The chemical substances are subject to Orders issued by EPA pursuant to section 5(e) of TSCA. This action would require persons who intend to manufacture (defined by statute to include import) or process any of these 145 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the premanufacture notice, made an appropriate determination on the notification, and has taken such actions as are required with that determination. In addition to this notice of proposed rulemaking, EPA is issuing the action as a direct final rule elsewhere in this issue of the **Federal Register**.

DATES: Comments must be received on or before August 31, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0366, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: In addition to this Notice of Proposed Rulemaking, EPA is issuing the action as a direct final rule elsewhere in this issue of the **Federal Register**. For further information about the proposed significant new use rules, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 19, 2018.

Jeffery T. Morris,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 2018–15996 Filed 7–31–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 171128999–8625–01]

RIN 0648–BH43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Permit Renewal Applications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to make administrative revisions to the renewal process for Federal vessel permits, licenses, and endorsements, and dealer permits (hereafter referred to collectively as permits) in the NMFS Southeast Region. This proposed rule would remove the regulatory requirement that NMFS must mail a renewal application to a permit holder (vessel or dealer) whose Federal permit is expiring. NMFS will continue to provide notice of the upcoming expiration date to the permit holder. This proposed rule would also remove the regulatory requirement that NMFS must notify an applicant of any deficiency in a renewal application only through sending a letter via traditional mail, such as through the U.S. Postal Service, which would allow NMFS expanded options for notifying permit holders. The purpose of this proposed rule is to reduce the administrative costs and burden to NMFS of renewing Federal permits, while still maintaining the needed information and services to the public.

DATES: Written comments must be received by August 31, 2018.

ADDRESSES: You may submit comments on the proposed rule identified by

''NOAA–NMFS–2018–0064'' by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0064,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit all written comments to Sarah Stephenson, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this proposed rule may be submitted to Adam Bailey, NMFS Southeast Regional Office (see mailing address above), by email to *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Sarah Stephenson, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *sarah.stephenson@noaa.gov.*

SUPPLEMENTARY INFORMATION: In the U.S. southeast region, NMFS and regional fishery management councils manage fisheries in Federal waters under the under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and through regulations implemented by NMFS at 50 CFR part 622.

Background

NMFS issues permits, licenses, or endorsements to vessel owners and seafood dealers for species managed under multiple fishery management plans (FMPs) developed by Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils. These permits are valid for 1 year from the date of issuance by NMFS. Current regulations require the Regional Administrator (RA) for the NMFS Southeast Region to mail a paper renewal application with instructions to a permit holder whose Federal permit is expiring approximately 2 months prior to the expiration date (50 CFR 622.4(g)(1)).

This requirement creates an administrative cost and time burden on NMFS, and other more efficient methods to obtain an application exist. The vessel permit application form with instructions totals nine pages, double sided, and the dealer permit application form with instructions totals five pages, double sided. Each of the application renewals incurs unnecessary labor and material costs for the printing and mailing of the renewal forms. In 2017, a total of 5,269 permit holders were estimated to collectively hold 18,188 permits that must be renewed annually. Depending on the renewal application package required, the corresponding number of pages mailed by the Southeast Permits Office each year for these renewals is between 26,345 and 47,421 pages.

Additionally, the current regulation for permit renewals requires NMFS to notify an applicant of any deficiency in a renewal application by a letter, which NMFS sends through traditional mail (50 CFR 622.4(g)(1)). In 2017, the NMFS Southeast Permits Office received approximately 8,060 separate applications for vessel permits, licenses, or endorsements, and dealer permits, of which NMFS subsequently mailed letters to 4,305 applicants (53 percent) to address application deficiencies. These notifications also incur unnecessary labor and material costs for the printing and mailing of these letters.

Management Measures Contained in This Proposed Rule

This proposed rule would remove the requirement that the RA mail a renewal application to a permit holder whose Federal permit is expiring. Instead, the RA would notify the permit holder approximately 2 months prior to the expiration date of the permit through a letter, email, or other appropriate means that may be available. NMFS would continue to mail applications upon request from an applicant, and applications to renew a Federal vessel permit, license, or endorsement, and dealer permit are currently available for download from the NMFS Southeast Permits Office website at *http://sero.nmfs.noaa.gov/operations_management_information_services/constituency_services_branch/permits/index.html.* NMFS is also continuing to expand the number of applications that applicants can submit online. As of July 1, 2018, applicants can access and submit applications online to renew 13 permits.

This proposed rule would also remove the requirement that the RA notify an applicant of any deficiency in a renewal application only by a letter sent through traditional mail.

NMFS expects this proposed rule to reduce administrative labor and material costs associated with mailing permit renewal applications and letters of application deficiency to permit holders by allowing NMFS the flexibility to use more efficient means to provide the permit renewal applications and notifications of application deficiency.

NMFS does not expect this proposed rule to affect the overall number of annual permit renewals that NMFS receives or change the average time necessary for an applicant to complete an application. This proposed rule would not result in any change to fisheries operations.

Additional Change not Contained in This Proposed Rule

Although not a regulatory requirement, NMFS has historically mailed renewal applications for Federal operator cards to vessel operators prior to the expiration date. If NMFS implements this proposed rule, a renewal application would not automatically be mailed to individuals with an operator card prior to the expiration date; however, similar to the notification of permit holders with Federal permits discussed in this proposed rule, NMFS intends to continue providing notification to a vessel operator with an operator card of its upcoming expiration prior to that date. Additionally, NMFS may use methods other than by letter to notify applicants that a renewal application contains deficiencies.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the applicable FMPs in the Gulf and South Atlantic, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

This proposed rule would directly apply to businesses that operate in the commercial fishing (NAICS code 11411), charter vessel and headboat (for-hire) fishing (NAICS code 487210), and fish and seafood market industries (NAICS code 445220) that are required to renew permits, licenses, and endorsements to continue to participate in fisheries managed by the Gulf of Mexico and South Atlantic Fishery Management Councils.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily engaged in commercial fishing 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 SBA's annual revenue threshold for a business involved in either the for-hire fishing, or fish and seafood marketing industry is $7.5 million. It is initially expected that almost all to all of the businesses directly affected by this action are small.

In 2017, 5,269 unique entities were estimated to collectively hold 18,188 permits, licenses, or endorsements that must be renewed annually, and these unique entities are expected to represent up to 5,269 unique small businesses.

The proposed rule would eliminate the requirement that the RA print and mail renewal applications to every applicable permit, license, or endorsement holder every year. Instead, the RA would notify small businesses whose permits are expiring and instruct them of the various alternative methods of acquiring the renewal application, which are: submit an electronic application form online, if available; download and print an application form; call the NMFS Southeast Permits Office toll-free number and request an application form by mail; or acquire an application form in person from the NMFS Southeast Permits Office.

Currently, all small businesses can acquire a paper renewal application by either waiting for the application in the mail, downloading and printing one, or coming to the Permits Office. An increasing number of applicants can access and submit an electronic renewal application online, but this service is not available for all applicants because not all renewal applications can be submitted online at this time. As of July 1, 2018, applicants can access and submit applications online to renew 13 permits (of the 27 permits issued under the FMPs), and NMFS is working to increase the number of permits that can be renewed in this manner.

This action would have no impact on any small businesses that currently submit an online application to renew their permit, download and print an application, or get an application in-person from the Permits Office. However, it would have impacts on those small businesses that currently rely on or otherwise use the application automatically mailed to them.

NMFS expects that this proposed rule would divide those latter small businesses into four subgroups depending on which option to obtain an application they prefer and are able to choose. The number of small businesses that would choose any particular option is unknown. All options would require the same average amount of time to complete an application.

As NMFS continues to expand the number of permit applications that are available to submit online, small businesses that presently cannot submit their permit renewal applications online would receive multiple direct and indirect benefits. These include the convenience and efficiency of accessing and submitting an application online, eliminating the cost of mailing a completed paper application (estimated to be, on average, $0.91 per application annually), and a small business' ability to pay the renewal fee(s) by either credit card or electronic check via *Pay.gov* accessed through the Southeast Fisheries Online Permit System, rather than by check or money order. Benefits of paying electronically include, but are not restricted to, higher transaction speed, reduced check-associated costs, and greater transaction transparency.

The existing option to download and print out a paper application would have added benefits and costs to those who currently do not choose this option. These include the flexibility to acquire the application at their convenience and the additional direct cost of downloading and printing each application form (expected to vary from $1 to $10). This option would not change baseline mailing costs ($0.91) or payment options. Payment submitted with paper applications must be made by either check or money order.

The proposed rule would also give small businesses the option to call the NMFS Southeast Permits Office toll-free to request that NMFS mail a paper application to them. This would require a small business to take the time to call NMFS to request the application be mailed. This option is essentially a no-action alternative; there would be no change in baseline mailing costs or payment options to small businesses for each application.

A fourth option would be for an applicant to travel to the NMFS Southeast Permits Office in St. Petersburg, Florida, to obtain an application. However, NMFS expects that most small businesses would not select this option because of time and travel costs.

The added cost to acquire an application by telephone request, download, online access and submission, or traveling to the Permits Office is expected to be minimal. In conclusion, NMFS expects this proposed rule would not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0205. Public reporting burden for renewal applications in the Southeast Region Permit Family of Forms is estimated to vary between 30 and 55 minutes, depending on the applicable form. The estimated reporting burdens are based on an individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed rule would not change existing collection-of-information requirements or estimated reporting burdens. Send comments regarding the burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden to Adam Bailey, NMFS Southeast Regional Office (see **ADDRESSES**), 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 will 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. All currently approved collections of information may be viewed at *http://*

www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 622

Commercial, Dealer, Endorsement, Fisheries, Fishing, Gulf of Mexico, License, Permit, South Atlantic.

Dated: July 27, 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 622 is proposed to be amended as follows:

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

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

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

■ 2. In § 622.4, revise paragraph (g)(1) to read as follows:

§ 622.4 Permits and fees—general.

* * * * *

(g) * * *

(1) *Vessel permits, licenses, and endorsements, and dealer permits.* Unless specified otherwise, a vessel or dealer permit holder who has been issued a permit, license, or endorsement under this part must renew such permit, license, or endorsement on an annual basis. The RA will notify a vessel or dealer permit holder whose permit, license, or endorsement is expiring approximately 2 months prior to the expiration date. A vessel or dealer permit holder who does not receive a notification is still required to submit an application form as specified below. The applicant must submit a completed renewal application form and all required supporting documents to the RA prior to the applicable deadline for renewal of the permit, license, or endorsement, and at least 30 calendar days prior to the date on which the applicant desires to have the permit made effective. Application forms and instructions for renewal are available online at *sero.nmfs.noaa.gov* or from the RA (Southeast Permits Office) at 1–877–376–4877, Monday through Friday between 8 a.m. and 4:30 p.m., eastern time. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 calendar days of the notification date by the RA, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

* * * * *

[FR Doc. 2018–16462 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 148

Wednesday, August 1, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0097]

Texas A&M AgriLife Research; Availability of a Draft Plant Pest Risk Assessment and Draft Environmental Assessment for Cotton Genetically Engineered for Ultra-low Gossypol Levels in the Cottonseed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is making available for public comment a draft plant pest risk assessment (PPRA) and draft environmental assessment (EA) for cotton designated as event TAM66274, which has been genetically engineered for ultra-low gossypol levels in the cottonseed. We are making the draft PPRA and draft EA available for public review and comment.

DATES: We will consider all comments that we receive on or before August 31, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2017-0097.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0097, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http:// www.regulations.gov/#!docket Detail;D=APHIS-2017-0097* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS website at: *http:// www.aphis.usda.gov/biotechnology/ petitions_table_pending.shtml* under APHIS petition 17–292–01p.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. APHIS received a petition (APHIS Petition Number 17–292–01p) from Texas A&M AgriLife Research of College Station, TX (Texas A&M), seeking a determination of nonregulated status of cotton (*Gossypium hirsutum*) designated as event TAM66274, which has been genetically engineered for ultra-low gossypol levels in the cottonseed. The Texas A&M petition states that information collected during field trials and laboratory analyses indicates that TAM66274 cotton is not likely to be a plant pest and therefore should not be a regulated article under APHIS' regulations in 7 CFR part 340.

According to our process [1] for soliciting public comment when considering petitions for determinations of nonregulated status of GE organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. In a notice [2] published in the **Federal Register** on December 5, 2017 (82 FR 57426–57427, Docket No. APHIS–2017–0097), APHIS announced the availability of the Texas A&M petition for public comment. APHIS solicited comments on the petition for 60 days ending on February 5, 2018, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. APHIS received 47 comments on the petition. Of those, 44 were supportive, two opposed, and one was not related to the petition. APHIS has evaluated the issues raised during the comment period and, where appropriate, has provided a discussion of these issues in our draft environmental assessment (EA).

After public comments are received on a completed petition, APHIS evaluates those comments and then provides a second opportunity for public involvement in our decisionmaking process. According to our public review process (see footnote 1), the second opportunity for public involvement follows one of two approaches, as described below.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises no substantive new issues, APHIS will follow Approach 1 for public involvement. Under Approach 1, APHIS announces in the **Federal Register** the availability of APHIS' preliminary regulatory determination along with its draft EA, preliminary finding of no significant

[1] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for GE organisms. To view the notice, go to *http:// www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

[2] To view the notice, the petition, and the comments we received, go to *http:// www.regulations.gov/#!docketDetail;D=APHIS-2017-0097.*

impact (FONSI), and its draft plant pest risk assessment (PPRA) for a 30-day public review period. APHIS will evaluate any information received related to the petition and its supporting documents during the 30-day public review period.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises substantive new issues, APHIS will follow Approach 2. Under Approach 2, APHIS first solicits written comments from the public on a draft EA and draft PPRA for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and draft PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA and, based on the final EA, a National Environmental Policy Act (NEPA) decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). For this petition, we are using Approach 2.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a PPRA to assess the plant pest risk of the article. APHIS also prepares the appropriate environmental documentation—either an EA or an environmental impact statement—in accordance with NEPA, to provide the Agency and the public with a review and analysis of any potential environmental impacts that may result if the petition request is approved.

APHIS has prepared a draft PPRA and has concluded that cotton designated as event TAM66274, which has been genetically engineered for ultra-low gossypol levels in the cottonseed, is unlikely to pose a plant pest risk. In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.

APHIS has also prepared a draft EA in which we present two alternatives based on our analysis of data submitted by Texas A&M, a review of other scientific data, field tests conducted under APHIS oversight, and comments received on the petition. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of cotton designated as event TAM66274, or (2) make a determination of nonregulated status of cotton designated as event TAM66274.

The draft EA was prepared in accordance with (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) U.S. Department of Agriculture regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments on our draft EA and our draft PPRA regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 30 days from the date of this notice. Copies of the draft EA and the draft PPRA, as well as the previously published petition, are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the 30-day comment period closes, APHIS will review and evaluate any information received during the comment period and any other relevant information. After reviewing and evaluating the comments on the draft EA and the draft PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA. Based on the final EA, APHIS will prepare a NEPA decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). If a FONSI is reached, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of the GE organism and the availability of APHIS' final EA, PPRA, FONSI, and our regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of July 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–16389 Filed 7–31–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho (Boise, Caribou-Targhee, Salmon-Challis, and Sawtooth National Forests and Curlew National Grassland); Nevada (Humboldt-Toiyabe National Forest); Utah (Ashley, Dixie, Fishlake, Manti-La Sal, and Uinta-Wasatch-Cache National Forests); Wyoming (Bridger-Teton National Forest); and Wyoming/Colorado (Medicine Bow-Routt National Forest and Thunder Basin National Grassland); Amendments to Land Management Plans for Greater Sage-Grouse Conservation

AGENCY: Forest Service, USDA.

ACTION: Notice to extend the public scoping period for supplemental notice of intent to prepare an environmental impact statement; notice of updated information concerning the Forest Service greater sage-grouse land and resource management plan amendments; correction.

SUMMARY: The USDA Forest Service is issuing this notice to advise the public of a 14-day extension to the public scoping period on the supplemental notice of intent to prepare an environmental impact statement for the amendments to land management plans for greater sage-grouse conservation.

DATES: Comments concerning the scope of the analysis must be received by August 15, 2018.

ADDRESSES: Send written comments to Sage-grouse Amendment Comment, USDA Forest Service Intermountain Region, Federal Building, 324 25th Street, Ogden, UT 84401.

Comments may also be sent via email to, *comments-intermtn-regional-office@fs.fed.us,* or via facsimile to 801–625–5277.

FOR FURTHER INFORMATION CONTACT: John Shivik at 801–625–5667 or email *johnashivik@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 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The original corrected notice of intent for public comment on the greater sage-grouse plan amendments was published in the **Federal Register** on July 2, 2018 (83 FR 30909). The original notice of intent provided a 30 day comment period, which may be insufficient for comment preparation from all interested parties. As such, the comment period

for the original notice is being extended by 14 days.

If the Forest Service amends land management plans, we hereby give notice that substantive requirements of the 2012 Planning Rule (36 CFR part 219) that are likely to be directly related, and therefore applicable, to the amendments are in sections 219.8(a) and (b) (ecological and social and economic sustainability), 219.9 (diversity of plant and animal communities), and 219.10(a) (integrated resource management for ecosystem services and multiple use).

The public is encouraged to help identify any issues, management questions, or concerns that should be addressed in plan amendment(s) or policy or administrative action. The Forest Service will work collaboratively with interested parties to identify the management direction that is best suited to local, regional, and national needs and concerns. The Forest Service will use an interdisciplinary approach as it considers the variety of resource issues and concerns.

Dated: July 26, 2018.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–16556 Filed 7–31–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Annual Survey of U.S. Direct Investment Abroad.

OMB Control Number: 0608–0053.

Form Number: BE–11.

Type of Request: Regular submission.

Estimated Number of Respondents: 3,150 respondents (U.S. parents). A complete response includes a BE–11 A form for the U.S. parent's domestic operation and one or more BE–11 B, C, or D forms for its foreign affiliates that meet the BE–11 survey requirements. BEA estimates that U.S. parents will submit 3,150 A forms, 25,000 B forms, 1,500 C forms, 200 D forms, and 500 Claim for Exemption forms.

Estimated Total Annual Burden Hours: 325,750 hours. Total annual burden is calculated by multiplying the estimated number of submissions of each form by the average hourly burden per form, which is 7 hours for the A form, 12 hours for the B form, 2 hours for the C form, 1 hour for the D form, and 1 hour for the Claim for Exemption form.

Estimated Time per Respondent: 103.4 hours per respondent (325,750 hours/3,150 U.S. parents) is the average, but may vary considerably among respondents because of differences in company structure, complexity, and the number of foreign affiliates each U.S. parent must report.

Needs and Uses: The Annual Survey of U.S. Direct Investment Abroad (BE–11) obtains sample data on the financial structure and operations of U.S. parents and their foreign affiliates. The data are needed to provide reliable, useful, and timely measures of U.S. direct investment abroad to assess its impact on the U.S. and foreign economies. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is conducted every five years. The data collected include balance sheets; income statements; property, plant, and equipment; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annual.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of Chief Information Officer.

[FR Doc. 2018–16410 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Annual Survey of Foreign Direct Investment in the United States.

OMB Control Number: 0608–0034.

Form Number: BE–15.

Type of Request: Regular submission.

Estimated Number of Respondents: 5,700 annually, of which approximately 2,300 file A forms, 1,600 file B forms, 1,300 file C forms, and 500 file Claim for Exemption forms.

Estimated Total Annual Burden Hours: 112,350 hours. Total annual burden is calculated by multiplying the estimated number of submissions of each form by the average hourly burden per form, which is 44.75 hours for the A form, 3.75 hours for the B form, 2.25 hours for the C form, and 1 hour for the Claim for Exemption form.

Estimated Time per Respondent: 19.7 hours per respondent (112,350 hours/5,700 respondents) is the average, but may vary considerably among respondents because of differences in company size and complexity.

Needs and Uses: The Annual Survey of Foreign Direct Investment in the United States (BE–15) obtains sample data on the financial structure and operations of foreign-owned U.S. business enterprises. The data are needed to provide reliable, useful, and timely measures of foreign direct investment in the United States to assess its impact on the U.S. economy. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, which is conducted every five years. The data collected include balance sheets; income statements; property, plant, and equipment; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity for the U.S. operations. In addition to these national data, several data items are collected by state, including employment and property, plant, and equipment.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annual.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to OIRA *Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of Chief Information Officer.

[FR Doc. 2018–16411 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Service Annual Survey.

OMB Control Number: 0607–0422.

Form Number(s): SA–22010A—SA–81300E (180 forms total).

Type of Request: Revision of a currently approved collection.

Number of Respondents: 91,401.

Average Hours per Response: 1 hour and 32 minutes.

Burden Hours: 139,889.

Needs and Uses: Over 50 percent of all economic activity is generated by businesses in the services sectors, defined to exclude retail and wholesale trade. The U.S. Census Bureau currently measures the total output of most of the service industries annually in the Service Annual Survey (SAS). This survey currently covers all or portions of: Utilities; Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; Accommodation and Food Services; and Other Services (except Public Administration) as defined by the North American Industry Classification System (NAICS). The SAS provides the only official source of annual revenue estimates for the service industries.

Estimates from the SAS are essential to measurement of economic growth, real output, prices, and productivity for our nation's economy. A broad spectrum of government and private stakeholders use these estimates in analyzing economic activity; forecasting economic growth; and compiling data on productivity, prices and the gross domestic product (GDP). In addition, trade and professional organizations use these estimates to analyze industry trends, benchmark their own statistical products and develop forecasts. Private businesses use these estimates to measure market share, analyze business potential, and plan investments.

Collected data include operating revenue for both taxable and tax-exempt firms and organizations, sources of revenue and expenses by type for selected industries, operating expenses, and selected industry-specific items. In addition, e-commerce data is collected for all industries, and export and inventory data is collected for selected industries. The availability of these data greatly improves the quality of the intermediate inputs and value-added estimates in the annual input-output and GDP by industry accounts produced by the Bureau of Economic Analysis (BEA).

Beginning in survey year 2018, the operating expenses portion of the questionnaire will be condensed substantially in non-Economic Census reference years. This change will relieve respondent burden with the goal of improving the rate and quality of survey response.

The Census Bureau will also begin measuring telemedicine. The use of telemedicine by mental health professionals is increasing as the nation's behavioral health is a huge concern, especially with the current opioid crisis. With increased insurance coverage for the cost of these services, it is likely that more healthcare professionals will begin delivering services via telemedicine. This question will provide the first federal data on the new business model of telemedicine for outpatient medical providers. It will be an expansion of the current patient visits question, and will appear on forms SA–62000A/E, SA–62150A/E, and SA–62190A/E (total of 6 forms). The question will be subject to cognitive testing, modified based on results if necessary, and implemented when it has cleared testing. Cognitive testing will be conducted under the Census Bureau's generic clearance for questionnaire pretesting research.

In addition, a new form will be created (SA–52413 A/E) for reinsurance carriers featuring a new variation of the existing ''Direct Losses Incurred'' question (Item 13). This change will increase clarity for respondents and reduce reporting error.

Minor changes will also be made to various forms to increase clarity of what is being asked of respondents (*e.g.,* improving instructions or removing parts of a question), improve the quality of data the Census Bureau receives, and further reduce respondent burden.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 182 authorize the collection. Sections 224 and 225 make reporting mandatory.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–16409 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–106–2018]

Foreign-Trade Zone 163—Ponce, Puerto Rico; Application for Subzone; Liquilux Gas Corporation; Ponce, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by CODEZOL, C.D., grantee of FTZ 163, requesting subzone status for the facility of Liquilux Gas Corporation, located in Ponce, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on July 27, 2018.

The proposed subzone (1.96 acres) is located at Carr. Del Muelle #215 in Ponce, Puerto Rico. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 163.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 2018. Rebuttal comments

in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 25, 2018.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: July 27, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–16444 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–087]

Steel Propane Cylinders From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt at (202) 482–7851, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 2018, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of steel propane cylinders from the People's Republic of China (China).[1] Currently, the preliminary determination is due no later than August 15, 2018.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On July 20, 2018, the petitioners submitted a timely request that Commerce postpone the preliminary CVD determination.[3] The petitioners stated that the purpose of their request is to provide Commerce with adequate time to analyze fully questionnaire responses from the Government of China and the mandatory respondents and to determine the extent to which the respondents received countervailable subsidies.[4] In accordance with 19 CFR 351.205(e), the petitioners have stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* October 19, 2018. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 26, 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. 2018–16447 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Steel Propane Cylinders From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 83 FR 28189 (June 18, 2018) (*Initiation Notice*).

[2] The petitioners are Worthington Industries and Manchester Tank & Equipment Co.

[3] *See* the petitioners' letter, ''Steel Propane Cylinders from the People's Republic of China—Petitioners' Request to Postpone Preliminary Determination,'' dated July 20, 2018.

[4] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable (August 1, 2018).

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the Commission, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are

initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Commerce contact
A–475–818	731–TA–734	Italy	Certain Pasta, (4th Review)	Jacqueline Arrowsmith, (202) 482–5255.
C–475–819	701–TA–365	Italy	Certain Pasta, (4th Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–489–805	731–TA–735	Turkey	Certain Pasta, (4th Review)	Joshua Poole, (202) 482–1293.
C–489–806	701–TA–366	Turkey	Certain Pasta, (4th Review)	Joshua Poole, (202) 482–1293.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerces's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[1]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties must use the certification formats provided in 19 CFR 351.303(g).[3] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 26, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–16445 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–817]

Ripe Olives From Spain: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on ripe olives from Spain.

DATES: Applicable August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Peter Zukowski, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on June 18, 2018, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of ripe olives from Spain.[1] On July 25, 2018, the ITC notified Commerce of its final determination pursuant to section 735(b)(1)(A) of the Act that an industry in the United States is materially injured by reason of the LTFV imports of ripe olives from Spain.[2]

Scope of the Order

The merchandise covered by this order is ripe olives. For a complete description of the scope of the order, *see* the Appendix to this notice.

Antidumping Duty Order

On July 25, 2018, in accordance with sections 735(b)(1)(A) and 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of ripe olives from Spain that are sold in the United States at LTFV.[3] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this antidumping duty order. Because the ITC determined that imports of ripe olives from Spain are materially injuring a U.S. industry, unliquidated entries of such merchandise from Spain, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of ripe olives from Spain. Antidumping duties will be assessed on unliquidated entries of ripe olives from Spain entered, or withdrawn from warehouse, for consumption on or after January 26, 2018, the date of publication of the *Preliminary Determination,*[4] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation of all appropriate entries of ripe olives from Spain as described in the Appendix to this notice, which were entered, or withdrawn from warehouse, for consumption on or after January 26, 2018, the date of publication of the preliminary determination of this investigation in the **Federal Register**. These instructions suspending liquidation will remain in effect until further notice.

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require cash deposits equal to the amounts indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated antidumping duties on this subject merchandise, a cash deposit equal to the cash deposit rates listed below.[5] The all-others rate applies to producers or exporters not specifically listed, as appropriate. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise have been adjusted, as appropriate, for estimated domestic subsidy pass-through rates calculated based on the final determination of the companion countervailing duty investigation of ripe olives from Spain.[6]

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of ripe olives from Spain, Commerce extended the four-month period to six months.[7] In the underlying investigation, Commerce published the preliminary determination on January 26, 2018. Therefore, the extended period, beginning on the date of publication of the *Preliminary Determination,* ended on July 24, 2018. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice,[8] we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of ripe olives from Spain entered, or withdrawn from warehouse, for consumption after July 24, 2018, the date the provisional measures expired, through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

[1] *See Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 28193 (June 18, 2018) (*Final Determination*).

[2] *See Notification* Letter from the ITC dated July 25, 2018 (ITC Letter).

[3] *See* ITC Letter.

[4] *See Ripe Olives from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 3677 (January 26, 2018) (*Preliminary Determination*).

[5] *See* sections 736(a)(3) of the Act.

[6] *See Final Determination,* 83 FR at 28194.

[7] *See Preliminary Determination,* 83 FR at 3679.

[8] *See, e.g., Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016).

Estimated Weighted-Average Dumping Margins

The weighted-average antidumping duty margin percentages and cash deposit rates are as follows:

Exporter producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent) [9]
Aceitunas Guadalquivir S.L	17.45	17.46
Agro Sevilla Aceitunas S.COOP Andalusia	25.50	25.39
Angel Camacho Alimentacion S.L	16.88	16.83
All-Others	20.04	19.98

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to ripe olives from Spain pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 25, 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.

Appendix

Scope of the Order

The products covered by this order are certain processed olives, usually referred to as ''ripe olives.'' The subject merchandise includes all colors of olives; all shapes and sizes of olives, whether pitted or not pitted, and whether whole, sliced, chopped, minced, wedged, broken, or otherwise reduced in size; all types of packaging, whether for consumer (retail) or institutional (food service) sale, and whether canned or packaged in glass, metal, plastic, multilayered airtight containers (including pouches), or otherwise; and all manners of preparation and preservation, whether low acid or acidified, stuffed or not stuffed, with or without flavoring and/or saline solution, and including in ambient, refrigerated, or frozen conditions.

Included are all ripe olives grown, processed in whole or in part, or packaged in Spain. Subject merchandise includes ripe olives that have been further processed in Spain or a third country, including but not limited to curing, fermenting, rinsing, oxidizing, pitting, slicing, chopping, segmenting, wedging, stuffing, packaging, or heat treating, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in Spain.

Subject merchandise includes ripe olives that otherwise meet the definition above that are packaged together with non-subject products, where the smallest individual packaging unit (*e.g.,* can, pouch, jar, etc.) of any such product—regardless of whether the smallest unit of packaging is included in a larger packaging unit (*e.g.,* display case, etc.)—contains a majority (*i.e.,* more than 50 percent) of ripe olives by net drained weight. The scope does not include the non-subject components of such product.

Excluded from the scope are: (1) Specialty olives [10] (including ''Spanish-style,'' ''Sicilian-style,'' and other similar olives) that have been processed by fermentation only, or by being cured in an alkaline solution for not longer than 12 hours and subsequently fermented; and (2) provisionally prepared olives unsuitable for immediate consumption (currently classifiable in subheading 0711.20 of the Harmonized Tariff Schedule of the United States (HTSUS)).

The merchandise subject to this order is currently classifiable under subheadings 2005.70.0230, 2005.70.0260, 2005.70.0430, 2005.70.0460, 2005.70.5030, 2005.70.5060, 2005.70.6020, 2005.70.6030, 2005.70.6050, 2005.70.6060, 2005.70.6070, 2005.70.7000, 2005.70.7510, 2005.70.7515, 2005.70.7520, and 2005.70.7525 HTSUS. Subject merchandise may also be imported under subheadings 2005.70.0600, 2005.70.0800, 2005.70.1200, 2005.70.1600, 2005.70.1800, 2005.70.2300, 2005.70.2510, 2005.70.2520, 2005.70.2530, 2005.70.2540, 2005.70.2550, 2005.70.2560, 2005.70.9100, 2005.70.9300, and 2005.70.9700. Although HTSUS subheadings are provided for convenience and U.S. Customs purposes, they do not define the scope of the order; rather, the written description of the subject merchandise is dispositive.

[FR Doc. 2018–16450 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DS–P

[9] The cash deposit rate is equal to the calculated estimated weighted-average dumping margin adjusted for the appropriate subsidy offset(s).

[10] Some of the major types of specialty olives and their curing methods are:

- ''Spanish-style'' green olives: Spanish-style green olives have a mildly salty, slightly bitter taste, and are usually pitted and stuffed. This style of olive is primarily produced in Spain and can be made from various olive varieties. Most are stuffed with pimento; other popular stuffings are jalapeno, garlic, and cheese. The raw olives that are used to produce Spanish-style green olives are picked while they are unripe, after which they are submerged in an alkaline solution for typically less than a day to partially remove their bitterness, rinsed, and fermented in a strong salt brine, giving them their characteristic flavor.
- ''Sicilian-style'' green olives: Sicilian-style olives are large, firm green olives with a natural bitter and savory flavor. This style of olive is produced in small quantities in the United States using a Sevillano variety of olive and harvested green with a firm texture. Sicilian-style olives are processed using a brine-cured method, and undergo a full fermentation in a salt and lactic acid brine for 4 to 9 months. These olives may be sold whole unpitted, pitted, or stuffed.
- ''Kalamata'' olives: Kalamata olives are slightly curved in shape, tender in texture, and purple in color, and have a rich natural tangy and savory flavor. This style of olive is produced in Greece using a Kalamata variety olive. The olives are harvested after they are fully ripened on the tree, and typically use a brine-cured fermentation method over 4 to 9 months in a salt brine.
- Other specialty olives in a full range of colors, sizes, and origins, typically fermented in a salt brine for 3 months or more.

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 01–1A001]

Export Trade Certificate of Review

ACTION: Notice of Application To Amend the Export Trade Certificate of Review Held by Ginseng Board of Wisconsin, Inc., Application No. 01–1A001.

SUMMARY: The Secretary of Commerce, through the International Trade Administration, Office of Trade and Economic Analysis (''OTEA''), received an application to amend the Export Trade Certificate of Review (''Certificate'') held by Ginseng Board of Wisconsin, Inc. (''GBW''). This notice summarizes the proposed amendment and seeks public comments on whether

the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 01–1A001.''

A summary of the current application follows.

Summary of the Application

Applicant: Ginseng & Herb Cooperative, 3899 Co Rd B, Marathon, WI 54448.

Contact: Glenn Heier, President, (715) 443–3355.

Application No.: 01–1A001.

Date Deemed Submitted: July 18, 2018.

Proposed Amendment: GBW (the Certificate holder) and Ginseng & Herb Cooperative (''GHC''; currently a Member) seek to amend the Certificate as follows:

1. Remove GBW as the Certificate holder and issue the Certificate to GHC,
2. Remove all references to GBW and the GBW Seal,
3. Remove all references to Members,
4. Remove all references to Mechthild Handke,
5. Remove all references to Ginseng Research Institute of America, Inc. (''GRIA''), and
6. Remove reference to the supplier lottery.

Additionally, GHC seeks to change the list of Products under the Export Trade section of the Certificate from ''cultivated ginseng and cultivated ginseng products; cultivated golden seal and cultivated golden seal products; cultivated echinacea and cultivated echinacea products'' to ''cultivated ginseng and cultivated ginseng products, including wholesale ginseng roots, ginseng capsules 500 mg, ginseng slices, ginseng tea, ginseng powder and fiber, and ginseng retail root.''

The Export Trade Activities and Methods of Operation currently covered by the Certificate as published in the **Federal Register** on January 31, 2001 (66 FR 8386) will be amended consistent with the above listed proposed changes.

Dated: July 27, 2018.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration

[FR Doc. 2018–16486 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for September 2018

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in September 2018 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

Antidumping duty proceedings	Department contact
Silicomanganese from India (A–533–823) (3rd Review)	Jacqueline Arrowsmith (202) 482–5255
Welded Large Diameter Line Pipe from Japan (A–588–857) (3rd Review)	Jacqueline Arrowsmith (202) 482–5255
Silicomanganese from Kazakhstan (A–834–807) (3rd Review)	Jacqueline Arrowsmith (202) 482–5255
Silicomanganese from Venezuela (A–307–820) (3rd Review)	Jacqueline Arrowsmith (202) 482–5255

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in September 2018.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in September 2018.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these

proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 26, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–16446 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–064]

Stainless Steel Flanges From the People's Republic of China: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on stainless steel flanges from the People's Republic of China (China).

DATES: Applicable August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on June 11, 2018, Commerce published its affirmative *Final Determination* in the less than fair value (LTFV) investigation of stainless steel flanges from China.[1] On July 25, 2018, the ITC notified Commerce of its final determination pursuant to section 735(d) of the Act, that an industry in the United States is materially injured by reason of LTFV imports of stainless steel flanges from China, within the meaning of section 735(b)(1)(A) of the Act.[2]

Scope of the Order

The products covered by this order are stainless steel flanges from China. For a complete description of the scope of the order, *see* the Appendix to this notice.

Antidumping Duty Order

In accordance with sections 735(b)(1)(A) and 735(d) of the Act, the ITC has notified Commerce of its final determination in this investigation, in which it found that imports of stainless steel flanges from China are materially injuring a U.S. industry.[3] Therefore, in accordance with sections 735(c)(2) and 736(a) of the Act, we are publishing this antidumping duty order.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of stainless steel flanges from China. These antidumping duties will be assessed on unliquidated entries of stainless steel flanges from China entered, or withdrawn from warehouse, for consumption on or after March 28, 2018, the date on which Commerce published the *Preliminary Determination,*[4] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on entries of subject merchandise from China. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated antidumping duty margin.[5] The ''China-wide'' rate applies to all exporters of subject merchandise not specifically listed in the table below.

Provisional Measures

Section 733(d) of the Act states that instructions to suspend liquidation issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of subject merchandise request to extend the four-month period to six months. Therefore, the four-month period beginning on March 28, 2018, the date of publication of the *Preliminary Determination,* ended on July 25, 2018. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of stainless steel flanges from China entered, or withdrawn from warehouse, for consumption on or after July 26, 2018, the day after which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Estimated Dumping Margins

Commerce determines that the estimated final weighted-average dumping margins are as follows:

[1] *See Stainless Steel Flanges from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 26959 (June 11, 2018) (*Final Determination*).

[2] *See* ITC Letter regarding stainless steel flanges from China, dated July 25, 2018 (ITC Notification); *see also Stainless Steel Flanges from China,* Inv. No. 731–TA–1383 (Final), USITC Pub. 4807, (July 2018).

[3] *See* ITC Notification.

[4] *See Stainless Steel Flanges from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 13244 (March 28, 2018) (*Preliminary Determination*).

[5] *See* section 736(a)(3) of the Act.

Exporter/producer	Weighted-average dumping margins (percent)
Shanxi Guanjiaying Flange Forging Group Co., Ltd	257.11
China-wide Entity	257.11

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to stainless steel flanges from China, pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 25, 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.

Appendix

Scope of the Order

The products covered by this order are certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term ''stainless steel'' used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) Weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the stainless steel flanges.

Merchandise subject to the order is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2018–16348 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–818]

Ripe Olives From Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (the ITC), Commerce is issuing a countervailing duty (CVD) order on ripe olives from Spain. In addition, Commerce is amending its final CVD determination with respect to ripe olives from Spain to correct ministerial errors.

DATES: Applicable August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg or Lana Nigro, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785 or (202) 482–1779, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(a), 705(d), and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on June 18, 2018, Commerce published in the **Federal Register** an affirmative final determination in the CVD investigation of ripe olives from Spain.[1] Interested parties submitted timely filed allegations that Commerce made certain ministerial errors in the final CVD determination of ripe olives from Spain. Section 705(e) of the Act and 19 CFR 351.224(f) define ministerial errors as errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Commerce considers ministerial. We reviewed the allegations and determined that we made certain ministerial errors. *See* ''Amendment to the Final Determination'' section below for further discussion.

On July 25, 2018, the ITC notified Commerce of its affirmative determination pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Act, that an industry in the United States is materially injured by reason of subsidized imports of ripe olives from Spain.[2]

Scope of the Order

The merchandise covered by this order is ripe olives from Spain. For a complete description of the scope of this order, *see* the Appendix to this notice.

Amendment to the Final Determination

On June 19, 2018, the petitioner,[3] Aceitunas Guadalquivir S.L.U. (Aceitunas Guadalquivir), and Angel Camacho Alimentación, S.L. (Angel Camacho) timely alleged that the *Final Determination* contained certain ministerial errors and requested that Commerce correct such errors. On June 25, 2018, the petitioner filed rebuttal comments.

Commerce reviewed the record and, on July 12, 2018, agreed that certain errors referenced in the petitioner's and Angel Camacho's allegations constitute ministerial errors within the meaning of section 705(e) of the Act and 19 CFR

[1] *See Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination,* 83 FR 28186 (June 18, 2018) (*Final Determination*) and accompanying Issues and Decision Memorandum.

[2] *See* Letter from the ITC to Commerce, dated July 25, 2018; *see also Ripe Olives from Spain* (Investigation Nos. 701–TA–582 and 731–TA–1377 (Final), USITC Publication 4805, July 2018).

[3] The petitioner to this investigation is the Coalition for Fair Trade in Ripe Olives, whose individual member are BellCarter Foods, Inc. and Musco Family Olive Co.

351.224(f).[4] Commerce did not agree that the error alleged in Aceitunas Guadalquivir's submission constituted a ministerial error. Commerce found that it made errors in calculating Angel Camacho's benefit under the European Union Common Agricultural Policy Pillar I: Basic Payment Scheme—Greening program, and in attributing to Angel Camacho subsidies received by its cross-owned input suppliers.[5] Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Determination* to reflect the correction of the ministerial errors described above. Based on our correction of the ministerial errors in Angel Camacho's calculation, the subsidy rate for Angel Camacho increased from 13.22 percent *ad valorem* to 13.76 percent *ad valorem*.[6] Because in the *Final Determination* we based the ''all-others'' rate, in part, on Angel Camacho's *ad valorem* subsidy rate,[7] the correction described above also required that we recalculate the ''all-others'' rate. This recalculation increases the ''all-others'' rate determined in the *Final Determination* from 14.75 percent *ad valorem* to 14.97 percent *ad valorem*.[8]

Countervailing Duty Order

On July 25, 2018, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of subsidized imports of ripe olives from Spain. Therefore, in accordance with section 705(c)(2) of the Act, we are issuing this CVD order. Because the ITC determined that imports of ripe olives from Spain are materially injuring a U.S. industry, unliquidated entries of such merchandise from Spain, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct United States Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties equal to the net countervailable subsidy rates, for all relevant entries of ripe olives from Spain. Upon further instruction by Commerce, countervailing duties will be assessed on unliquidated entries of ripe olives from Spain entered, or withdrawn from warehouse, for consumption on or after November 28, 2017, the date of publication of the *Preliminary Determination*.[9]

Cash Deposits and Suspension of Liquidation

In accordance with section 706 of the Act, we will instruct CBP to suspend liquidation on all relevant entries of ripe olives from Spain, as further described below. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the subsidy rates listed below.[10] The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Company	Subsidy rate (%)
Aceitunas Guadalquivir S.L.U [11]	27.02
Agro Sevilla Aceitunas S.Coop.And	7.52
Angel Camacho Alimentación, S.L [12]	13.76
All-Others	14.97

Provisional Measures

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary CVD determination may not remain in effect for more than four months. In the underlying investigation, Commerce published the *Preliminary Determination* on November 28, 2017. Therefore, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on March 27, 2018, the final day on which provisional measures were in effect. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 703(d) of the Act and our practice, we instructed CBP to terminate the suspension of liquidation of and to liquidate, without regard to duties, unliquidated entries of ripe olives from Spain made on or after March 28, 2018. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Notification to Interested Parties

This notice constitutes the CVD order with respect to ripe olives from Spain pursuant to section 706(a) of the Act. Interested parties can find a list of CVD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order and amended final determination are published in accordance with section 705(d)–(e), 706(a), and 777(i)(1) of the Act and 19 CFR 351.211(b).

[4] *See* Memorandum, ''Ripe Olives from Spain: Amended Final Determination of Countervailing Duty Investigation Pursuant to Ministerial Error Allegation,'' dated July 12, 2018 (Ministerial Error Memorandum).

[5] *Id.*

[6] *Id.*

[7] *Final Determination,* 83 FR at 28187.

[8] *See* Ministerial Error Memorandum.

[9] *See Ripe Olives from Spain: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 82 FR 56218 (November 28, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum). However, as described further below, entries that occurred after the final day on which provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**, are not subject to countervailing duties.

[10] *See* section 706(a)(3) of the Act.

[11] Commerce found the following companies to be cross-owned with Aceitunas Guadalquivir S.L.U.: Coromar Inv., S.L., AG Explotaciones Agricolas, S.L.U., and Grupo Aceitunas Guadalquivir, S.L. *See* Preliminary Decision Memorandum at 9, unchanged in *Final Determination.*

[12] Commerce found the following companies to be cross-owned with Angel Camacho Alimentación, S.L.: Grupo Angel Camacho Alimentacíon, Cuarterola S.L., and Cucanoche S.L. *See* Preliminary Decision Memorandum at 11, unchanged in *Final Determination.*

Dated: July 25, 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.

Appendix

Scope of the Order

The products covered by this order are certain processed olives, usually referred to as ''ripe olives.'' The subject merchandise includes all colors of olives; all shapes and sizes of olives, whether pitted or not pitted, and whether whole, sliced, chopped, minced, wedged, broken, or otherwise reduced in size; all types of packaging, whether for consumer (retail) or institutional (food service) sale, and whether canned or packaged in glass, metal, plastic, multilayered airtight containers (including pouches), or otherwise; and all manners of preparation and preservation, whether low acid or acidified, stuffed or not stuffed, with or without flavoring and/or saline solution, and including in ambient, refrigerated, or frozen conditions.

Included are all ripe olives grown, processed in whole or in part, or packaged in Spain. Subject merchandise includes ripe olives that have been further processed in Spain or a third country, including but not limited to curing, fermenting, rinsing, oxidizing, pitting, slicing, chopping, segmenting, wedging, stuffing, packaging, or heat treating, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in Spain.

Subject merchandise includes ripe olives that otherwise meet the definition above that are packaged together with non-subject products, where the smallest individual packaging unit (*e.g.,* can, pouch, jar, etc.) of any such product—regardless of whether the smallest unit of packaging is included in a larger packaging unit (*e.g.,* display case, etc.)—contains a majority (*i.e.,* more than 50 percent) of ripe olives by net drained weight. The scope does not include the non-subject components of such product.

Excluded from the scope are: (1) Specialty olives [13] (including ''Spanish-style,'' ''Sicilian-style,'' and other similar olives) that have been processed by fermentation only, or by being cured in an alkaline solution for not longer than 12 hours and subsequently fermented; and (2) provisionally prepared olives unsuitable for immediate consumption (currently classifiable in subheading 0711.20 of the Harmonized Tariff Schedule of the United States (HTSUS)).

The merchandise subject to this order is currently classifiable under subheadings 2005.70.0230, 2005.70.0260, 2005.70.0430, 2005.70.0460, 2005.70.5030, 2005.70.5060, 2005.70.6020, 2005.70.6030, 2005.70.6050, 2005.70.6060, 2005.70.6070, 2005.70.7000, 2005.70.7510, 2005.70.7515, 2005.70.7520, and 2005.70.7525 HTSUS. Subject merchandise may also be imported under subheadings 2005.70.0600, 2005.70.0800, 2005.70.1200, 2005.70.1600, 2005.70.1800, 2005.70.2300, 2005.70.2510, 2005.70.2520, 2005.70.2530, 2005.70.2540, 2005.70.2550, 2005.70.2560, 2005.70.9100, 2005.70.9300, and 2005.70.9700. Although HTSUS subheadings are provided for convenience and U.S. Customs purposes, they do not define the scope of the order; rather, the written description of the subject merchandise is dispositive.

[FR Doc. 2018–16449 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DS–P

[13] Some of the major types of specialty olives and their curing methods are:

• ''Spanish-style'' green olives: Spanish-style green olives have a mildly salty, slightly bitter taste, and are usually pitted and stuffed. This style of olive is primarily produced in Spain and can be made from various olive varieties. Most are stuffed with pimento; other popular stuffings are jalapeno, garlic, and cheese. The raw olives that are used to produce Spanish-style green olives are picked while they are unripe, after which they are submerged in an alkaline solution for typically less than a day to partially remove their bitterness, rinsed, and fermented in a strong salt brine, giving them their characteristic flavor.

• ''Sicilian-style'' green olives: Sicilian-style olives are large, firm green olives with a natural bitter and savory flavor. This style of olive is produced in small quantities in the United States using a Sevillano variety of olive and harvested green with a firm texture. Sicilian-style olives are processed using a brine-cured method, and undergo a full fermentation in a salt and lactic acid brine for 4 to 9 months. These olives may be sold whole unpitted, pitted, or stuffed.

• ''Kalamata'' olives: Kalamata olives are slightly curved in shape, tender in texture, and purple in color, and have a rich natural tangy and savory flavor. This style of olive is produced in Greece using a Kalamata variety olive. The olives are harvested after they are fully ripened on the tree, and typically use a brine-cured fermentation method over 4 to 9 months in a salt brine.

• Other specialty olives in a full range of colors, sizes, and origins, typically fermented in a salt brine for 3 months or more.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Polyester Staple Fiber From the Republic of Korea: Rescission of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on polyester staple fiber (PSF) from the Republic of Korea (Korea), based on the timely withdrawal of requests for review. The period of review (POR) is May 1, 2017, through April 30, 2018.

DATES: Applicable August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Brown, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3702.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2018, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on PSF from Korea for the POR of May 1, 2017, through April 30, 2018.[1] On May 31, 2018, pursuant to 19 CFR 351.213, Commerce received a timely-filed request from DAK Americas LLC and Auriga Polymers, Inc. (collectively, the petitioners) for an administrative review of, among others, Huvis Corporation (Huvis).[2] Also on May 31, 2018, Huvis Corporation (Huvis) requested an administrative review of its POR sales.[3] On July 12, 2018, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation of an administrative review of Huvis.[4] On July 17 and 18, 2018, respectively, pursuant to 19 CFR 351.213(d)(1), both the petitioners and Huvis timely withdrew their requests for an administrative review of Huvis.[5]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), Commerce will rescind an administrative review, in whole or in part, if the party, or parties, that requested a review withdraw(s) the request(s) within 90 days of the publication date of the notice of initiation of the requested review. As noted above, both the petitioners and Huvis withdrew their requests for review of Huvis within 90 days of the publication date of the notice of

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 19047 (May 1, 2018).

[2] *See* Letter from the petitioners, ''Polyester Staple Fiber from Korea—Request for Annual Administrative Review'' (May 31, 2018). The petitioners also requested an administrative review of Toray Chemical Korea, Inc. (Toray). However, the petitioners withdrew their request for Toray before the review was initiated. *See* Letter from the petitioners, ''Polyester Staple Fiber from Korea—Withdrawal of Review Request for Toray Chemical Korea'' (June 26, 2018). Thus, a review was not initiated for Toray.

[3] *See* Letter from Huvis, ''Certain Polyester Staple Fiber from Korea; Request for Administrative Review for 2017–2018 Period'' (May 31, 2018).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 32270 (July 12, 2018) (Notice of Initiation).

[5] *See* Letter from the petitioners, ''Polyester Staple Fiber from Korea—Withdrawal of Review Request for Huvis Corporation'' (July 17, 2018); *see also* Letter from Huvis, ''Certain Polyester Staple Fiber from Korea; Withdrawal of Request for Administrative Review for 2017–2018 Period'' (July 18, 2018).

initiation. No other parties requested an administrative review of the antidumping duty order on PSF from Korea. Therefore, in response to the timely withdrawal of requests for review and, in accordance with 19 CFR 351.213(d)(l), Commerce is rescinding this review.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of PSF from Korea during the POR. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern the business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: July 27, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–16448 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG354

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Monkfish Research Set-Aside Exempted Fishing Permit Adjustment

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

ACTION: Notice; request for comments.

SUMMARY: The Acting Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an adjustment to increase the total weight of monkfish allowed to be harvested under the two existing exempted fishing permits issued for the 2017 monkfish research set-aside program warrants further consideration. This notice provides interested parties the opportunity to comment on the proposed change to these exempted fishing permits.

DATES: Comments must be received on or before August 16, 2018.

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

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on 2017 Monkfish RSA DAS Pound Increase.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2017 Monkfish RSA DAS Pound Increase.''

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, 978–281–9180, *Cynthia.Hanson@noaa.gov.*

SUPPLEMENTARY INFORMATION: Exempted Fishing Permits (EFP) that waive monkfish landing limits for designated Research Set-Aside (RSA) days-at-sea (DAS) have been routinely issued since 2007 to increase operational efficiency and to optimize research funds generated under the Monkfish RSA Program. Amendment 2 to the Monkfish Fishery Management Plan (FMP) (70 FR 21929; April 28, 2005) specifies that 500 RSA DAS are set aside each year to support approved monkfish research projects. Award recipients receive an allocation of those 500 RSA DAS, and their EFP limits the maximum weight of monkfish that may be landed under their allocated RSA DAS. Projects are constrained to the total DAS, maximum landing weight, or EFP expiration date, whichever is reached first. Since the origination of the RSA program in 2007, no project has reached the total DAS or maximum landing weight.

Allowing vessels an exemption from monkfish landing limits provides an incentive for vessel owners to participate in the Monkfish RSA Program. Constraining each project to a maximum harvest limit ensures that the overall Monkfish RSA catch will be consistent with DAS effort and total mortality controls established for the fishery as a whole. To calculate the maximum weight allocation for each year's 500 RSA DAS, we assign each RSA DAS to be equal to twice the limit for a Permit Category A or C monkfish vessel fishing in the Southern Fishery Management Area (*i.e.,* the highest permissible landing limit within the fishery). This means that annually, a maximum weight of 500 times this calculated RSA DAS pound value may be harvested under the Monkfish RSA program, and each project is limited to this assigned weight value multiplied by their allocated number of RSA DAS.

On April 28, 2017, we issued RSA compensation fishing EFPs to the Cornell Cooperative Extension (Cornell) and the University of Massachusetts School for Marine Science and Technology (SMAST) for their 2017 Monkfish RSA projects. At the time, the associated monkfish landing weight for each 2017 RSA DAS was 3,552 lb (1,611 kg). Cornell was allocated 300 DAS for a maximum weight limit of 1,065,600 lb (483,348 kg) to fund their research. SMAST was allocated the remaining 200 DAS, allowing 710,400 lb (322,232 kg) to be caught for their project. However, on July 12, 2017, Framework Adjustment 10 to the Monkfish FMP (82 FR 32145) increased the industry's DAS allocation and trip limits across the whole monkfish fishery. As a part of the Framework 10 changes, the possession limit for Category A and C vessels in the Southern Area increased from 1,776 lb (806 kg) to 2,037 lb (924 kg).

On June 8 and July 12, 2018, we received requests from Cornell and

SMAST, to increase assigned pound value of the 2017 RSA DAS from 3,552 lb (1,611 kg) to 4,074 lb (1,848 kg), commensurate with the Framework 10 possession limit increase already implemented in the fishery. The adjusted total weight limit of each project under this higher DAS valuation would be 1,222,200 lb (554,381 kg) for Cornell and 814,800 lb (369,587 kg) for SMAST. Investigators from Cornell and SMAST have stated there is less incentive for industry to buy RSA DAS now that the possession limits in the fishery have increased through the Framework 10 measures. The requested weight adjustment to RSA DAS would help maintain the relative value of the Monkfish RSA Program, and potentially attract and maintain participants from the fishing industry.

The revised EFPs would not alter the previously approved exemptions, and all participating vessels and allocated RSA DAS would remain the same. The only revision would be the maximum total weight that may be landed under each project. This adjustment would be consistent with changes implemented in the monkfish fishery under Framework 10, and the minimal additional effort that may occur within the RSA program is negligible and within the scope of the analysis originally conducted. The proposed adjustment does not change any of the determinations made during the review and approval of the original 2017 Monkfish RSA EFPs. These EFPs are scheduled to expire April 30, 2019. Because the RSA program is a unique entitlement within the monkfish fishery, we are soliciting public input on the increase in per RSA DAS weight requested by the participating research institutions.

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

Dated: July 27, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–16437 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG106

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Ketchikan Berth IV Expansion Project

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

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Ketchikan Dock Company (KDC) to incidentally harass, by Level A and B harassment, marine mammals during construction activities associated with the Ketchikan Berth IV Expansion project in Ketchikan, AK.

DATES: This Authorization is applicable from October 1, 2018 through August 31, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan Molineaux, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On February 13, 2018, NMFS received a request from the KDC for an IHA to take marine mammals incidental to construction activities associated with the Ketchikan Berth IV Expansion Project. The IHA application was determined adequate and complete on March 28, 2018. The KDC's request is for take of eight species of marine mammals by Level B harassment and Level A harassment of a small number of harbor porpoises and harbor seals. Neither the KDC nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Activity

The KDC will expand Berth IV, its dock adjacent to downtown Ketchikan, Alaska, located in East Tongass Narrows, in order to accommodate a new fleet of large cruise ships that are expected to reach Alaska in the summer of 2019.

The expansion will include the removal of some existing piles and structures and the installation of new piles and structures. All pile driving and removal will take place at the existing dock facility and is expected to occur over the course of 29 days (not necessarily consecutive). The project will occur in marine waters that support several marine mammal species. The pile driving, pile removal, and drilling activities associated with the project may result in behavioral harassment (Level B harassment and small numbers of Level A harassment) of marine mammal species.

The purpose of this project is to reconfigure Berth IV so that it can accommodate larger cruise ships. This project is needed because the existing Berth IV cannot support the modern fleet of larger cruise ships. Once the project is constructed Berth IV will be

able to accommodate these large cruise ships.

Construction activities associated with impact pile driving, vibratory pile driving/removal, and drilling are expected to take three to four months beginning in Fall 2018. The project is likely to begin in October of 2018 and complete in January of 2019, depending on the start date, construction could extend into March of 2019. Regardless of start date, construction will occur within a four-month (maximum) work window. The total number of days for pile removal, pile installation and drilling is expected to occur over 29 days (not necessarily consecutive days). The total construction duration accounts for the time required to mobilize materials and resources and construct the project. The duration also accounts for potential delays in material deliveries, equipment maintenance, inclement weather, and shutdowns that may occur to prevent impacts to marine mammals. Please see Table 1 below for the specific amount of time required to install and remove piles.

TABLE—1 PILE DRIVING CONSTRUCTION SUMMARY

Description	Project component					
	Existing pile removal	Temporary pile installation	Temporary pile removal	Permanent pile installation	Permanent pile installation	Max installation/ removal per day
Pile Diameter and Type	24, 30, and 36-inch steel.	30-inch steel	30-inch steel	30-inch steel	48-inch steel	
# of Piles	2, 6, and 4 respectively; 12 total.	16	16	1	17	
Vibratory Pile Driving						
Max # of Piles Vibrated Per Day	4	4	4	1	2	4 temporary or 2 permanent.
Vibratory Time Per Pile	15 minutes	30 minutes	10 minutes	1 hour	1 hour	
Vibratory Time per day	1 hour	2 hours	40 minutes	1 hour	2 hours	2 hours.
Vibratory Time Total	3 hours	8 hours	2 hours 40 minutes.	1 hour	17 hours	
Impact Pile Driving						
Max # of Piles Impacted Per Day.	0	0	0	0	3	3.
# of Strikes Per Pile	0	0	0	0	50 strikes	150 strikes.
Impact Time Per Pile	0	0	0	0	5 minutes	
Impact Time per Day	0	0	0	0	15 minutes	15 minutes.
Impact Time Total	0	0	0	0	1 hour 25 minutes.	
Socketing Pile Installation (Drilling)						
Max # of Piles Socketed per Day.	0	0	0	1	0	1.
Socket Time Per Pile	0	0	0	3 hours	0	
Socket Time per Day	0	0	0	3 hours	0	3 hours.
Socket Time Total	0	0	0	3 hours	0	
Anchor Drilling						
Max # of Piles drilled per Day	0	0	0	3	0	3.
Drilling Time Per Pile	0	0	0	2.5 hours	0	
Drilling Time per Day	0	0	0	7.5 hours	0	7.5 hours.
Anchor Time Total	0	0	0	42.5 hours	0	

A detailed description of the planned activities is provided in the proposed IHA for this action found in the following **Federal Register** notice (83 FR 22009, May 11, 2018). Since that time, the only alteration that has been made to the planned activities is the activity duration for impact piling of the 48-inch piles. The number of strikes per pile will be no more than 50 strikes per pile (See Table 1). As a result of this change in duration, the Level A zone for the activity and take numbers were also modified. In addition, take will now be authorized for anchor drilling. The new Level A zones for impact piling of 48-inch piles, the modeled zones for anchor drilling, and the revised take numbers are presented and discussed further in the Estimated Take Section. Due to only slight changes in the activity duration for impact piling, a detailed description of the action is not provided here. Please refer to the **Federal Register** notice (83 FR 22009, May 11, 2018) for the proposed IHA for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA was published in the **Federal Register** on May 11, 2018 (83 FR 22009). During the 30-day public comment period, the Marine Mammal Commission (Commission) submitted a letter on April 2, 2018. The Commission recommended that NMFS issue the IHA, subject to inclusion of the mitigation, monitoring, and reporting measures.

Comment 1: The Commission recommends that NMFS review more thoroughly both the applications prior

to deeming them complete and its notices prior to submitting them for publication in the **Federal Register**. For example, the Commission stated that NMFS incorrectly assumed a pile casing would inhibit sound transmission during drilling of 30-in anchors into bedrock, which underestimated the numbers of Level B harassment takes for harbor seals and Steller sea lions.

Response: NMFS thanks the Commission for pointing out the errors in the **Federal Register** notice for the proposed authorization. NMFS has addressed those errors in this notice of issuance of the authorization. NMFS makes every effort to read notices thoroughly prior to publication and will continue this effort to publish the best possible product for public comment. In addition, NMFS notes that recent drilling techniques which have not been authorized in the past require further review due to the novelty of such actions. Due to this, NMFS continues to welcome suggestions from the Commission on how to approach new drilling techniques until acoustic monitoring data is available for such actions.

Comment 2: The Commission recommends that NMFS refrain from implementing its proposed renewal process and instead use abbreviated **Federal Register** notices and reference existing documents to streamline the incidental harassment authorization process. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

Response: The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Additional reference to this solicitation of public comment has recently been added at the beginning of FR notices that consider renewals. NMFS appreciates the streamlining achieved by the use of abbreviated FR notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements. We believe our proposed method for issuing renewals meets statutory requirements and maximizes efficiency. Importantly, such renewals would be limited to circumstances where: the activities are identical or nearly identical to those analyzed in the proposed IHA; monitoring does not indicate impacts that were not previously analyzed and authorized; and, the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as they are for all IHAs. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the of the species likely to be affected by the construction project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 22009, May 11, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/topic/population-assessments/marine-mammals*) for generalized species accounts. All species that could potentially occur in the planned survey area are included in Table 2.

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA DURING THE SPECIFIED ACTIVITY

Common name	Scientific name	MMPA Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific.	E, D,Y	10,103 (0.3; 7,890; 2006).	83	21
Minke whale	*Balaenoptera acutorostrata*	Alaska	-, N	N.A.	N.A.	N.A.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Killer whale	*Orcinus orca*	Alaska Resident.	-, N	2,347 (N.A.; 2,347; 2012) [4].	23.4	1
		West Coast Transient	-, N	243 (N.A, 243, 2009) [4].	2.4	1
		Northern Resident	-, N	290 (N.A; 290; 2014) [6].	1.96	0

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA DURING THE SPECIFIED ACTIVITY—Continued

Common name	Scientific name	MMPA Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Pacific white-sided dolphin ..	*Lagenorhynchus obliquidens*	North Pacific	-/-; N	26,880 (N.A.; N.A.; 1990).	N.A.	0
Family Phocoenidae						
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska.	-, Y	975 (0.10; 896; 2012) [5].	8.9 [5]	34 [5]
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, N	83,400	N.A.	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller sea lion	*Eumatopia jubatus*	Eastern U.S.	-,-, N	41,638 (N/A; 41,638; 2015).	2,498	108
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina richardii*	Clarence Strait.	-, N	31,634 (N.A.; 29,093; 2011).	1,222	41

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (−) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N/A).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] N is based on counts of individual animals identified from photo-identification catalogs.

[5] In the SAR for harbor porpoise (NMFS 2017), NMFS identified population estimates and PBR for porpoises within inland Southeast Alaska waters (these abundance estimates have not been corrected for g(0); therefore, they are likely conservative). The calculated PBR is considered unreliable for the entire stock because it is based on estimates from surveys of only a portion (the inside waters of Southeast Alaska) of the range of this stock as currently designated. The Annual M/SI is for the entire stock, including coastal waters.

[6] Abundance estimates obtained from Towers *et al.,* 2015.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from pile driving/removal and drilling activities for the Ketchikan Berth IV Expansion project have the potential to result in Level A and Level B harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (83 FR 22009, May 11, 2018) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat in the action area, therefore that information is not repeated here; please refer to the **Federal Register** notice (83 FR 22009, May 11, 2018) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes for authorization through this IHA, which will inform both NMFS's consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of impact pile driving, vibratory pile driving/removal, and drilling has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for harbor seals and harbor porpoises due to larger predicted auditory injury zones. Auditory injury is unlikely to occur for other species. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality or serious injury is anticipated or authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. Below, we describe these components in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed or experience TTS (equated to Level B harassment) or to incur PTS of

some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa rms for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa rms for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources.

KDC's construction activity includes the use of continuous (vibratory pile driving and drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa rms thresholds for Level B behavioral harassment are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). KDC's activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and drilling) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

Table 3. Thresholds identifying the onset of Permanent Threshold Shift.

	PTS Onset Acoustic Thresholds* (Received Level)	
Hearing Group	**Impulsive**	**Non-impulsive**
Low-Frequency (LF) Cetaceans	*Cell 1* $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	*Cell 2* $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3* $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	*Cell 4* $L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	*Cell 5* $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	*Cell 6* $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 7* $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	*Cell 8* $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	*Cell 9* $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	*Cell 10* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Reference sound levels used by KDC for all vibratory and impact piling activities were derived from source level data from construction projects at the Port of Anchorage (Austin *et al.,* 2016) and Ketchikan Ferry Terminal (Denes *et al.,* 2016). To determine the ensonfied areas for both the Level A and Level B zones for vibratory piling of 48-inch/36-inch steel piles and 30-inch/24-inch steel piles, KDC used Sound Pressure Levels (SPLs) of 168.2 dB re 1 μPa rms and 161.9 dB re 1 μPa rms respectively. These were derived from vibratory pile driving data (of the same pile sizes) during the Port of Anchorage test pile project (Austin *et al.,* 2016, Tables 9 and 16) and the Ketchikan Ferry Terminal (Denes *et al.,* 2016, Table 72).

For impact pile driving, KDC used both SPLs and Sound Exposure Levels (SEL) derived from SSV studies conducted on 48-inch steel piles during the Port of Anchorage test pile project. To determine Level A ensonified zones from impact piling, KDC utilized an SEL of 186.7 dB. When determining Level A zones, SELs are more accurate than SPLs, as they incorporate the pulse duration explicitly rather than assuming a proxy pulse duration and they provide a more refined estimation of impacts. However, to determine the Level B zone for impact piling, an SPL of 198.6 dB re 1 μPa rms was used. In addition, for drilling (socket and anchor pile installation), KDC used a reference sound level of 167.7 dB re 1 μPa rms from SSV studies conducted during drilling activities at the Kodiak Ferry Terminal to calculate both the Level A and Level B ensonified zones for the Berth IV Expansion project. More information on the source levels used are presented in Table 4 below.

TABLE 4—PROJECT SOURCE LEVELS

Activity	Source level at 10 meters (dB)
Vibratory Pile Driving/Removal	
24-inch steel removal (2 piles) (~1 hour on 1 day) [1]	161.9 SPL [2]
30-inch steel removal (6 piles) (~1 hour per day on 2 days)	161.9 SPL [2]
36-inch steel removal (4 piles) (~1 hour on 1 day)	168.2 SPL [2]
30-inch steel temporary installation (16 piles) (~2 hours per day on 4 days)	161.9 SPL [2]
30-inch steel permanent installation (1 pile) (~2 hours on 1 day)	161.9 SPL [2]
48-inch steel permanent installation (17 piles) (~2 hours per day on 9 days)	168.2 SPL [2]
Impact Pile Driving	
48-inch steel permanent installation (17 piles) (~15 minutes per day on 6 days)	186.7 SEL/198.6 SPL [3]
Socketing Installation (Drilling)	
30-inch steel permanent installation (1 pile) (~3 hours on 1 day)	167.7 SPL [4]
Anchoring Installation (Drilling)	
30-inch steel permanent installation (17 piles) (~2.5 hours per day)	167.7 SPL [4]

[1] This project will only remove two 24-inch diameter steel piles total for a maximum of 30 minutes of removal in one day. However, because a maximum of 4 piles could be removed each day, we used 1 hour (the time it would take to remove four piles) of removal time instead of 30 minutes to calculate the distance threshold.

[2] The 36-inch and 48-inch diameter pile source levels are proxy from median measured source levels from pile driving of 48-inch piles for the Port of Anchorage test pile project (Austin *et al.* 2016, Tables 9 and 16). The 24-inch and 30-inch diameter source levels are proxy from median measured sources levels from pile driving of 30-inch diameter piles to construct the Ketchikan Ferry Terminal (Denes *et al.* 2016, Table 72).

[3] Sound pressure level root-mean-square (SPL rms) values were used to calculate distance to Level B harassment isopleths for impact pile driving. The source level of 186.7 SEL is the median measured from the Port of Anchorage test pile project for 48-inch piles (Austin *et al.* 2016, Table 9). We calculated the distances to Level A thresholds assuming 50 strikes per pile at 3 piles per day.

[4] The 30-inch diameter socketing and anchor source levels are derived from rom mean measured source levels from drilling of 24-inch diameter piles to construct the Kodiak Ferry Terminal (Denes *et al.* 2016, Table 72). The mean was chosen as a proxy due to it being more conservative than the median source level.

Level B Zones

The practical spreading model was used by KDC to generate the Level B harassment zones for all piling and drilling activities. Practical Spreading, a form of transmission loss, is described in full detail below.

Pile driving and drilling generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log10(R1/R2),$$

Where:

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which

sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Utilizing the practical spreading loss model, KDC determined underwater noise will fall below the behavioral effects threshold of 120 dB rms for marine mammals at a max radial distance of 16,343 meters and 15,136 meters for vibratory piling and drilling, respectively.[1] With these radial distances, and due to the occurrence of landforms (See Figure 5 of IHA Application), the largest Level B zone calculated for vibratory piling and drilling equaled 10.3 km². For calculating the Level B zone for impact driving, the practical spreading loss model was used with a behavioral threshold of 160 dB rms. The maximum radial distance of the Level B ensonified zone for impact piling equaled 3,744 meters. At this radial distance, the entire Level B zone for impact piling equaled 4.9 km². Table 5 below provides all Level B radial distances and their corresponding areas for each activity during KDC's Berth IV Expansion project.

TABLE 5—LEVEL B ZONES CALCULATED USING THE PRACTICAL SPREADING MODEL

Source	Level B zones (meters)	Level B zone (square kilometers)
Vibratory Pile Driving		
24-inch steel removal (2 piles) (~1 hour on 1 day 3)	6,215	5.9
30-inch steel removal (6 piles) (~1 hour per day on 2 days)	6,215	5.9
36-inch steel removal (4 piles) (~1 hour on 1 day)	*16,343	10.3
30-inch steel temporary installation (16 piles) (~2 hours per day on 4 days)	6,215	5.9
30-inch steel permanent installation (1 pile) (~2 hours on 1 day)	6,215	5.9
48-inch steel permanent installation (17 piles) (~2 hours per day on 9 days)	*16,343	10.3
Impact Pile Driving		
48-inch steel (17 piles) (~15 minutes per day on 6 days)	3,745	4.9
Socketing Pile Installation (Drilling)		
30-inch steel (1 pile) (~3 hours on 1 day)	*15,136	10.3

* These distances represent calculated distances based on the practical spreading model; however, landforms will block sound transmission at closer distances. The farthest distance that sound will transmit from the source is 13,755 m before transmission is stopped by Annette Island.

Level A Zones

When NMFS's Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (*i.e.,* pile driving and drilling), NMFS's User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting Level A isopleths are reported below.

TABLE 6—NMFS'S OPTIONAL USER SPREADSHEET INPUTS

User spreadsheet input							
Equipment type	Socket drill	Anchor drill	Vibratory pile driver (removal of 30-inch and 24-inch steel piles)	Vibratory pile driver (installation of 30-inch steel piles)	Vibratory pile driver (installation of 36-inch steel piles)	Vibratory pile driver (installation of 48-inch steel piles)	Impact pile driver
Spreadsheet Tab Used.	Non-impulsive, continuous.	Non-impulsive, continuous.	Non-impulsive, continuous.	Non-impulsive, continuous.	Non-impulsive, continuous.	Non-impulsive, continuous.	Impulsive, Non-continuous
Source Level	167.7 SPL	167.7 SPL	161.9 SPL	161.9 SPL	168.2 SPL	168.2 SPL	186.7 SEL
Weighting Factor Adjustment (kHz).	2	2	2.5	2.5	2.5	2.5	2

[1] These distances represent calculated distances based on the practical spreading model; however, landforms will block sound transmission at closer distances. The farthest distance that sound will transmit from the source is 13,755 m before transmission is stopped by Annette Island.

TABLE 6—NMFS'S OPTIONAL USER SPREADSHEET INPUTS—Continued

User spreadsheet input							
Equipment type	Socket drill	Anchor drill	Vibratory pile driver (removal of 30-inch and 24-inch steel piles)	Vibratory pile driver (installation of 30-inch steel piles)	Vibratory pile driver (installation of 36-inch steel piles)	Vibratory pile driver (installation of 48-inch steel piles)	Impact pile driver
(a) Activity duration within 24 hours. (b) Number of strikes per pile. (c) Number of piles per day.	(a) 3	(a) 7.5	(a) 1	(a) 2	(a) 1	(a) 2	(b) 150 (c) 3
Propagation (xLogR).	15	15	15	15	15	15	15
Distance of source level measurement (meters) +.	10	10	10	10	10	10	10

TABLE 7—NMFS OPTIONAL USER SPREADSHEET OUTPUTS

User spreadsheet output					
Source type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
PTS Isopleth (meters)					
Socket Drilling	40	2.3	35	21.4	1.6
Anchor Drilling	73.6	4.1	64.5	39.4	2.9
Vibratory Pile Driver (Removal of 30-inch and 24-inch steel piles)	7.8	0.7	11.6	4.8	0.3
Vibratory Pile Driver (Installation of 30-inch steel piles)	12.4	1.1	18.4	7.6	0.5
Vibratory Pile Driver (Installation of 36-inch steel piles)	20.6	1.8	30.5	12.5	0.9
Vibratory Pile Driver (Installation of 48-inch steel piles)	32.7	2.9	48.4	19.9	1.4
Impact Pile Driver	497.5	17.7	592.6	266.2	19.4
Daily ensonified area (km^2)					
Socket Drilling	0.003	0.000008	0.002	0.00078	0.000004
Anchor Drilling	0.02	0.00005	0.01	0.005	0.00003
Vibratory Pile Driver (Removal of 30-inch and 24-inch steel piles)	0.0001	0.0000008	0.0002	0.00004	0.0000001
Vibratory Pile Driver (Installation of 30-inch steel piles)	0.0002	0.000002	0.0005	0.00009	0.0000004
Vibratory Pile Driver (Installation of 36-inch steel piles)	0.001	0.00001	0.003	0.0005	0.000003
Vibratory Pile Driver (Installation of 48-inch steel piles)	0.003	0.00003	0.007	0.001	0.000006
Impact Pile Driver	0.8	0.001	1.1	0.22	0.0019

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to impact pile driving, vibratory pile driving/removal and drilling noises for each acoustic threshold were estimated using group size estimates and local observational data. As previously stated, Level B take as well as small numbers of Level A take will be considered for this action. Level B and Level A take are calculated differently for some species based on monthly and daily sightings data based on Freitag (2017) and average group sizes within the action area. Below gives a description of estimated habitat use and group sizes for the eight species of marine mammals known to occur within the action area.

Humpback Whale

Humpback whales frequent the action area and could be encountered during any given day of dock construction. In the project vicinity, humpback whales typically occur in groups of 1–2 animals, with an estimated maximum group size of four animals. Humpback whales can pass through the action area 0–3 times a month (Freitag 2017).

Minke Whale

Minke whales are rare in the action area, but they could be encountered during any given day of dock construction. These whales are usually sighted individually or in small groups of 2–3, but there are reports of loose aggregations of hundreds of animals (NMFS 2018). Freitag (2017) estimates that a group of three whales may occur near or within the action over the four-month period.

Killer Whales

Killer whales pass through the action area and could be encountered during any given day of dock construction. In the project vicinity, typical killer whale

pod size varies from between 1–2 and 7–10 individuals, with an estimated maximum group size of 10 animals. Killer whales are estimated to pass through the action area one time a month (Freitag 2017).

Pacific White-Sided Dolphin

Pacific white-sided dolphins are rare in the action area, but they could be encountered during any given day of dock construction (Freitag 2017). Pacific-white sided dolphins have been observed in Alaska waters in groups ranging from 20 to 164 animals (Muto *et al* 2016a).

Dall's Porpoise

Dall's porpoises are seen infrequently in the action area (Freitag 2017), but they could be encountered during any given day of dock construction. In the project vicinity, Dall's porpoises typically occur in groups of 10–15 animals, with an estimated maximum group size of 20 animals. Dall's porpoises have been observed passing through the action area 0–1 times a month (Freitag 2017).

Harbor Porpoise

Harbor porpoises are seen infrequently in the action area, but they could be encountered during any given day of dock construction. In the project vicinity, harbor porpoises typically occur in groups of one to five animals, with an estimated maximum group size of eight animals. Harbor porpoises have been observed passing through the action area 0–1 times a month (Freitag 2017).

Harbor Seals

Harbor seals are common in the action area and are expected to be encountered in low numbers during dock construction. In the action area harbor seals typically occur in groups of one to three animals, with an estimated maximum group size of three animals. Harbor seals can occur every day of the month in the project area (Freitag 2017).

Steller Sea Lions

Steller sea lions are common in the action area and are expected to be encountered in low numbers during dock construction. In the project vicinity Steller sea lions typically occur in groups of 1–10 animals (Freitag 2017), with an estimated maximum group size of 80 animals (HDR 2003). Steller sea lions can occur every day of the month in the project area (Freitag 2017).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. Table 8 below shows take as a percentage of population for each of the species.

Humpback Whale

Based on observational and group data it is estimated that a group of 2 humpback whales may occur within the Level B harassment zone three times each month over the four-month construction window during active pile driving (2 animals in a group × 3 groups each month × 4 months = 24 animals). Therefore, NMFS authorizes 24 Level B takes of humpback whales.

Minke Whale

Based on local sighting information (Freitag 2017), it is estimated that a group of three whales may occur within the Level B harassment zone once over the four-month construction window during active pile driving (three animals in a group × one group in four months = 3 animals). Therefore, NMFS authorizes three Level B takes of minke whale.

Killer Whales

Based on observational and group data it is estimated that a group of 10 killer whales may occur within the Level B harassment zone one time each month over the four-month construction window during active pile driving (10 animals in a group × 1 group each month × 4 months = 40 animals). Therefore, NMFS authorizes 40 Level B takes of killer whales. (To clarify, this request is for 40 takes from all stocks combined, not 40 takes from each stock).

Pacific White-Sided Dolphin

Based on observational and group data it is estimated that a group of 92 (median between 20 and 164) Pacific-white sided dolphins may occur within the Level B harassment zone once over the four-month construction window during active pile driving (92 animals in a group × one group in four months = 92 animals). Therefore, NMFS authorizes 92 Level B takes of Pacific white-sided dolphins.

Dall's Porpoise

Based on observational and group data it is estimated that a group of 15 Dall's porpoises may occur within the Level B harassment zone one time each month over the four-month construction window during active pile driving (15 animals in a group × one group each month × four months = 60 animals). Therefore, NMFS authorizes 60 Level B takes of Dall's porpoise.

Harbor Porpoise

Based on observational and group data it is conservatively estimated that a group of 5 harbor porpoise may occur within the Level B harassment zone one time each month over the four-month construction window during active pile driving (five animals in a group × one group each month × four months = 20 animals). In addition, NMFS authorizes Level A take for two groups of harbor porpoises to safeguard against the possibility of PSOs not being able detect a group of harbor porpoises within their largest corresponding shutdown (see table 9). Therefore, NMFS authorizes 20 Level B takes and 10 Level A takes of harbor porpoises.

Harbor Seals

Based on observational and group data it is conservatively estimated that two groups of three harbor seals may occur within the Level B harassment zone every day that pile driving may occur, and pile driving is estimated to occur on 29 days during the four-month long construction duration (three animals in a group × two groups per day × 29 days = 174 animals). In addition, NMFS authorizes Level A take for six groups of harbor seals to safeguard against the possibility of PSOs not being able detect a group of harbor seals within their largest corresponding shutdown zone (see Table 9). Therefore, NMFS authorizes 174 Level B takes and 18 Level A takes of harbor seals.

Steller Sea Lions

Based on observational and group data it is estimated that a group of 10 Steller sea lions may occur within the Level B harassment zone every day that pile driving may occur, and pile driving is estimated to occur on 29 days during the 4-month long construction duration (10 animals in a group × 20 days = 290 animals). Therefore, NMFS authorizes 290 Level B takes of Steller sea lions.

TABLE 8—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (NEST) [a]	Level A	Level B	Percent of stock
Humpback Whale	Hawaii DPS (11,398) [b]	0	[b] 22	0.20
	Mexico DPS (3,264) [b]		2	0.03
Minke Whale	Alaska (N/A)	0	3	N/A
Killer Whale	Alaska Resident (2,347)	0	40	1.70
	Northern Resident (261)			15.33
	West Coast Transient (243)			[d] 16.46
Pacific White-Sided Dolphin	North Pacific (26,880)	0	92	0.34
Dall's Porpoise	Alaska (83,400)	0	60	0.07
Harbor Porpoise	Southeast Alaska (975) [c]	10	20	3.07
Harbor Seal	Clarence Strait (31,634)	18	174	0.61
Steller Sea Lion	Eastern U.S. (49,497)	0	290	0.59

[a] Stock estimate from Muto, M. M. *et al.* 2016. Appendix 2. Stock Summary Table (last revised 12.30.16). NOAA–TM–AFSC–355Muto,M.M., *et al. http://www.nmfs.noaa.gov/pr/sars/pdf/ak_2016_sars_appendix_2.pdf* unless otherwise noted.

[b] Under the MMPA humpback whales are considered a single stock (Central North Pacific); however, we have divided them here to account for DPSs listed under the ESA. Based on calculations in Wade *et al.* 2016, 93.9 percent of the humpback whales in Southeast Alaska are expected to be from the Hawaii DPS and 61 percent are expected to be from the Mexico DPS.

[c] In the SAR for harbor porpoise (NMFS 2017), NMFS identified population estimates and PBR for porpoises within inland Southeast Alaska waters (these abundance estimates have not been corrected for g(0); therefore, they are likely conservative.

[d] These percentages assume all 40 takes come from each individual stock, thus the percentage should be inflated if multiple stocks are actually impacted.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are in the IHA:

Timing Restrictions

All work shall be conducted during daylight hours. If poor environmental conditions restrict visibility full visibility of the shutdown zone, pile installation would be delayed.

Sound Attenuation

To minimize noise during vibratory and impact pile driving, pile caps (pile softening material) shall be used. KDC shall use high-density polyethylene (HDPE) or ultra-high-molecular- weight polyethylene (UHMW) softening material on all templates to eliminate steel on steel noise generation.

Shutdown Zone for in-water Heavy Machinery Work

For in-water heavy machinery work (using, *e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), a minimum 10 meter shutdown zone shall be implemented. If a marine mammal comes within 10 meters of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include (but is not limited to) the following activities: (1) Movement of the barge to the pile location; (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile); or (3) removal of the pile from the water column/substrate via a crane (*i.e.,* deadpull).

Additional Shutdown Zones

For all pile driving/removal and drilling activities, KDC shall establish a shutdown zone for a marine mammal species that is greater than its corresponding Level A zone. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). The shutdown zones for each of the pile driving and drilling activities are listed below in Table 9.

TABLE 9—SHUTDOWN ZONES

Source	Shutdown zones (meters)				
	Low-frequency cetaceans (humpback whale, minke whale)	Mid-frequency cetaceans (killer whale, pacific-white sided dolphin)	High-frequency cetaceans (dall's porpoise, harbor porpoise)	Phocid (harbor seal)	Otariid (sea lion)
In-Water Construction Activities*					
In Water Heavy Construction (*i.e.,* Barge movements, pile positioning, deadpulling, and sound attenuation)	10	10	10	10	10
Vibratory Pile Driving					
24-inch steel removal (2 piles) (~1 hour on 1 day)	25	25	25	25	25
30-inch steel removal (6 piles) (~1 hour per day on 2 days)	25	25	25	25	25
36-inch steel removal (4 piles) (~1 hour on 1 day)	25	25	50	25	25
30-inch steel temporary installation (16 piles) (~2 hours per day on 4 days)	25	25	25	25	25
30-inch steel permanent installation (1 pile) (~2 hours on 1 day)	25	25	25	25	25
48-inch steel permanent installation (17 piles) (~2 hours per day on 9 days)	50	25	50	25	25
Impact Pile Driving					
48-inch steel permanent installation (17 piles) (~15 minutes per day on 6 days)	500	25	600	270	25
Socketing Pile Installation (Drilling)					
30-inch steel permanent installation (1 pile) (3 hours per day on 1 day)	50	25	50	25	25
Anchor Pile Installation (Drilling)					
30-inch steel permanent installation (7.5 hours per day)	80	25	80	50	25

Monitoring Zones

KDC shall establish and observe a monitoring zone. The monitoring zones for this project are areas where SPLs are equal to or exceed 120 dB rms (for vibratory pile driving and drilling) and 160 dB rms (for impact driving). These areas are equal to Level B harassment zones and are presented in Table 10 below. These zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area, but outside the shutdown zone, and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting instances of Level B harassment; disturbance zone monitoring is discussed in detail later (see Monitoring and Reporting).

TABLE 10—MONITORING ZONES

Source	Level B zones (meters)	Level B zone (square kilometers)
Vibratory Pile Driving		
24-inch steel removal (2 piles) (~1 hour on 1 day)	6,215	5.9
30-inch steel removal (6 piles) (~1 hour per day on 2 days)	6,215	5.9
36-inch steel removal (4 piles) (~1 hour on 1 day)	13,755	10.3
30-inch steel temporary installation (16 piles) (~2 hours per day on 4 days)	6,215	5.9
30-inch steel permanent installation (1 pile) (~2 hours on 1 day)	6,215	5.9
48-inch steel permanent installation (17 piles) (~2 hours per day on 9 days)	13,755	10.3
Impact Pile Driving		
48-inch steel (17 piles) (~15 minutes per day on 6 days)	3,745	4.9

TABLE 10—MONITORING ZONES—Continued

Source	Level B zones (meters)	Level B zone (square kilometers)
Socketing Pile Installation (Drilling)		
30-inch steel (1 pile) (~3 hours on 1 day)	13,755	10.3
Anchor Pile Installation (Drilling)		
30-inch steel (17 piles) (~7.5 hours on 1 day)	13,755	10.3

Non-Authorized Take Prohibited

If a species enters or approaches the Level B zone and that species is either not authorized for take or its authorized takes are met, pile driving, pile removal, and drilling activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed.

Soft Start

The use of a soft-start procedure are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact pile driving, contractors shall be required to provide an initial set of strikes from the hammer at 40 percent energy, each strike followed by no less than a 30-second waiting period. This procedure shall be conducted a total of three times before impact pile driving begins. Soft Start is not required during vibratory pile driving/removal or drilling activities.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving or drilling of 30 minutes or longer occurs, the observer shall observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone shall be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Monitoring zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Monitoring zone. When a marine mammal permitted for Level B take is present in the Monitoring zone, pile driving, pile removal, and drilling activities may begin and Level B take shall be recorded. As stated above, if the entire Level B zone is not visible at the start of construction, piling or drilling activities can begin. As shown, the largest Level B zone is equal to 78.9 km^2, making it impossible for the PSOs to view the entire harassment area. Due to this, Level B exposures shall be recorded and extrapolated based upon the number of observed take and the percentage of the Level B zone that was not visible. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Monitoring zone and shutdown zone shall commence.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that shall result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven, removed, or pile holes being drilled. Pile driving and drilling activities include the time to install, remove, or drill a hole for a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

Monitoring shall be conducted by NMFS approved Protected Species Observers (PSOs). The number of PSOs

shall vary from two to four, depending on the type of pile driving/drilling and size of pile, which determines the size of the harassment zones. Two land-based PSOs shall monitor during all impact pile driving activity, three land-based PSOs shall monitor during vibratory pile driving/removal of of 24 and 30-inch piles, and four land-based PSOs shall monitor during vibratory pile driving/removal of 36-inch and 48-inch diameter piles and during all socket and anchor drilling.

One PSO shall be stationed at Berth IV and shall be able to view across Tongass Narrows south and west to Gravina Island. The second and third PSOs shall be located in increments along the road systems at locations that provide the best vantage points for viewing Tongass Narrows west and east of Berth IV. These locations shall vary depending on type of pile driving. The fourth PSO shall be located on the road system near Mountain Point and shall be able to view Tongass Narrows to the northwest and Revillagigedo Channel to the southeast.

PSOs shall scan the waters using binoculars, and/or spotting scopes, and shall use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs shall be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring shall be conducted by qualified observers, who shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- At least one PSO must have prior experience working as a marine mammal observer during construction activities;
- Independent observers (*i.e.,* not construction personnel);
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience working as a marine mammal observer during construction;
- KDC shall submit PSO CVs for approval by NMFS; KDC shall ensure that observers have the following additional qualifications:
- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and
- Sufficient training, orientation, or experience with the construction operations to provide for personal safety during observations.

KDC shall submit a draft report to NMFS not later than 90 days following the end of construction activities. KDC shall provide a final report within 30 days following resolution of NMFS' comments on the draft report. Reports shall contain, at minimum, the following:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);
- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Weather parameters in each monitoring period (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions in each monitoring period (*e.g.,* sea state, tide state);
- For each marine mammal sighting:
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Estimated amount of time that the animals remained in the Level B zone;
- Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);
- Other human activity in the area within each monitoring period; and
- A summary of the following:
- Total number of individuals of each species detected within the Level B Zone, and estimated as taken if correction factor appropriate;
- Total number of individuals of each species detected within the Level A Zone and the average amount of time that they remained in that zone; and
- Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B Zone, and estimated as taken, if appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As stated in the mitigation section, shutdown zones, greater than Level A

harassment zones, shall be implemented. Level A take is only authorized as a precautionary measure for two species (harbor seals and harbor porpoises) in case PSOs are unable to detect them within their larger shutdown zones while impact piling 48-inch steel piles. Exposures to elevated sound levels produced during pile driving activities may cause behavioral responses by an animal, but they are expected to be mild and temporary. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease.

To minimize noise during vibratory and impact pile driving, KDC shall use pile caps (pile softening material). Much of the noise generated during pile installation comes from contact between the pile being driven and the steel template used to hold the pile in place. The contractor shall use high-density polyethylene (HDPE) or ultra-high-molecular-weight polyethylene (UHMW) softening material on all templates to eliminate steel on steel noise generation.

During all impact driving, implementation of soft start procedures and monitoring of established shutdown zones shall be required, significantly reducing any possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from an irritating sound source prior to it becoming potentially injurious. In addition, PSOs shall be stationed within the action area whenever pile driving and drilling operations are underway. Depending on the activity, KDC shall employ the use of two to four PSOs to ensure all monitoring and shutdown zones are properly observed.

Although the expansion of Berth IV's facilities would have some permanent removal of habitat available to marine mammals, the area lost would negligible. Most of the project footprint would be within previously disturbed areas adjacent to existing Berth IV structures and within an active marine commercial and industrial area. There are no known pinniped haulouts near the action area.

In addition, impacts to marine mammal prey species are expected to be minor and temporary. Overall, the area impacted by the project is very small compared to the available habitat around Ketchikan. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During pile driving and drilling, it is expected that fish and marine mammals would temporarily move to nearby locations and return to the area following cessation of in-water construction activities. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- Mortality is neither anticipated nor authorized for the project;
- The impacts to marine mammal habitat that are anticipated are minimal;
- The action area is located in an industrial and commercial marina;
- The project area does not include any rookeries, or known areas or features of special significance for foraging or reproduction in the project area;
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; and
- The required mitigation measures (*i.e.* shutdown zones and pile caps) are anticipated to be effective in reducing the impacts of the specified activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Take of eight of the ten marine mammal stocks authorized for take is approximately three percent or less of the stock abundance. For northern resident and west coast transient killer whales, we acknowledge that 15.33 percent and 16.46 percent of the stocks are to be taken by Level B harassment, respectively. However, since three stocks of killer whales could occur in the action area, the 40 total killer whale takes are likely split among the three stocks. Nonetheless, since NMFS does not have a good way to predict exactly how take will be split, NMFS analyzed at the most conservative scenario, which is that all 40 takes could potentially occur to each of the three stocks. This is a highly unlikely scenario to occur and the percentages of each stock taken are predicted to be significantly lower than values presented in Table 8 for killer whales.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with NMFS' Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS's Alaska Region issued a Biological Opinion on July 26, 2018 to NMFS's Office of Protected Resources which concluded that the Ketchikan Berth IV Expansion project is not likely to jeopardize the continued existence of Mexico DPS humpback whales or adversely modify critical habitat because none exists within the action area.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, we have issued an IHA to ADOT&PF for conducting the described construction activities related to city dock and ferry terminal improvements from June 1, 2019 through May 31, 2020 provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 27, 2018.

Elaine T. Saiz,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–16473 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2018–0046]

Patent Public Advisory Committee Public Hearing on the Proposed Patent Fee Schedule

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of public hearing.

SUMMARY: Under Section 10 of the America Invents Act (AIA), the United States Patent and Trademark Office (USPTO) may set or adjust by rule any patent or trademark fee established, authorized, or charged, respectively.

The USPTO currently is planning to propose to set or adjust patent fees pursuant to its Section 10 fee setting authority. As part of the rulemaking process to set or adjust patent fees, the Patent Public Advisory Committee (PPAC) is required under Section 10 of the AIA to hold a public hearing about any proposed patent fees, and the USPTO is required to assist PPAC in carrying out that hearing. To that end, the USPTO will make its proposed patent fees available as set forth in the Supplementary Information section of this Notice before any PPAC hearing and will help the PPAC to notify the public about the hearing. Accordingly, this document announces the dates and logistics for the PPAC public hearing regarding USPTO proposed patent fees. Interested members of the public are invited to testify at the hearing and/or submit written comments about the proposed patent fees and the questions posed on PPAC's website about the proposed fees.

DATES: Public hearing: September 6, 2018.

Comments: For those wishing to submit written comments on the fee proposal that will be published by August 29, 2018, the deadline for receipt of those written comments is September 13, 2018.

ADDRESSES: Public hearing: The PPAC will hold a public hearing on September 6, 2018 beginning at 9:00 a.m., Eastern Standard Time (EST), and ending at 11:00 a.m., EST, at the USPTO, Madison Auditorium North, Concourse Level, Madison Building, 600 Dulany Street, Alexandria, Virginia 22314.

Written comments may be submitted by email addressed to *fee.setting@uspto.gov* or by postal mail to United States Patent and Trademark Office, Mail Stop CFO, P.O. Box 1450, Alexandria, VA 22313–1450, ATTN: Brendan Hourigan.

Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email. Written comments should be identified in the subject line of the email or postal mailing as ''Fee Setting.''

Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or telephone number, should not be included in the comments.

Web cast: The public hearing will be available via Web cast. Information about the Web cast will be posted on the USPTO's internet website (*www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting*) before the public hearing.

Transcripts: Transcript of the hearing will be available on the USPTO internet website (*www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting*) shortly after the hearing.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Office of the Chief Financial Officer, by phone (571) 272–8966, or by email at *brendan.hourigan@uspto.gov.*

SUPPLEMENTARY INFORMATION: Effective September 16, 2011, with the passage of the AIA, the USPTO is authorized under Section 10 of the AIA to set or adjust by rule all patent and trademark fees established, authorized, or charged under Title 35 of the United States Code and the Trademark Act of 1946, respectively. Patent and trademark fees set or adjusted by rule under Section 10 of the AIA may only recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents and trademarks, respectively, including administrative costs of the Office with respect to each as the case may be. Congress set forth the process for the USPTO to follow in setting or adjusting patent and trademark fees by rule under Section 10 of the AIA, including additional procedural steps in the rulemaking proceeding for the issuance of regulations under this section. In particular, Congress requires the relevant advisory committee to hold a public hearing about the USPTO fee proposals after receiving them from the agency. Congress likewise requires the relevant advisory committee to prepare a written report on the proposed fees and the USPTO to consider the relevant advisory committee's report before finally setting or adjusting the fees.

Presently, the USPTO is planning to exercise its fee setting authority to set or adjust patent fees. As part of the rulemaking proceeding for the issuance of regulations under Section 10, the USPTO will publish a proposed patent fee schedule and related supplementary information for public viewing no later than August 29, 2018, on the USPTO internet website (address: *www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting*). In turn, the PPAC will hold a public hearing about the proposed patent fee schedule on the date indicated herein. The USPTO will assist the PPAC in holding the hearing by providing

resources to organize the hearing and by notifying the public about the hearing, such as through this notice. Following the PPAC public hearing, the USPTO will publish a Notice of Proposed Rulemaking in the **Federal Register**, setting forth its proposed patent fees.

Requests to Present Oral Testimony

Interested members of the public are invited to testify at the PPAC hearing about the proposed patent fees and the questions posed on PPAC's website about the proposed fees. Those wishing to present oral testimony at the hearing must submit a request in writing no later than August 29, 2018. Requests to testify should indicate the following: (1) The name of the person wishing to testify; (2) the person's contact information (telephone number and email address); (3) the organization(s) the person represents, if any; and (4) an indication of the amount of time needed for the testimony. Requests to testify must be submitted by email to Jennifer Lo at *Jennifer.Lo@uspto.gov.* Speakers providing testimony at the hearing should submit a written copy of their testimony for inclusion in the record of the proceedings no later than September 13, 2018.

Based upon the requests received, an agenda for witness testimony will be sent to testifying requesters and posted on the USPTO internet website (address: *www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting*). If time permits, the PPAC may permit unscheduled testimony as well.

Dated: July 25, 2018.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2018–16432 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 16, 2018 from 2:00 p.m. to 3:00 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Michael Li, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585. Phone number 202–287–5718; and email: *michael.li@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Welcome new STEAB members. Discuss recommendations from STEAB to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC, on July 27, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–16458 Filed 7–31–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on National Offshore Wind Energy R&D Test Facilities

AGENCY: Wind Energy Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) regarding national-level test facilities for offshore wind-specific research and development. The Wind Energy Technologies Office (WETO) is seeking information on facilities that can conduct unique offshore wind research and development (R&D) in the U.S., what upgrades to existing facilities or new facilities are needed for the U.S. to be at the cutting edge of offshore wind R&D, and what specific tests and analyses could be carried out at existing, upgraded, or new facilities in order to advance the U.S. offshore wind industry.

DATES: Responses to the RFI must be received by September 14, 2018.

ADDRESSES: Interested parties are to submit comments electronically to *osw.rfi@ee.doe.gov.* Include ''National Offshore Wind Energy R&D Test Facilities'' in the subject of the title. Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) attachment to the email, and no more than 10 pages in length, 12 point font, 1 inch margins. Only electronic responses will be accepted. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Alana Duerr, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 287–6953, or *osw.rfi@ee.doe.gov.* Further instruction can be found in the RFI document number DE–FOA–0001963 posted on EERE Exchange (*https://eere-exchange.energy.gov/).*

SUPPLEMENTARY INFORMATION: The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders on issues related to national offshore wind test facilities. WETO is specifically interested in information on: The facilities in the U.S. that are available for offshore wind-specific experimentation and testing; facilities upgrades or new facilities that are required in the U.S. for offshore wind testing in order to perform cutting edge R&D; and, the most pressing R&D needs that would utilize existing, upgraded, or new U.S. offshore wind specific facilities. The RFI is available at: *https://eere-exchange.energy.gov/*

Confidential Business Information

Because information received in response to this RFI may be used to structure future programs, funding and/or otherwise be made available to the

public, respondents are strongly advised to not include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response as detailed in the RFI [DE–FOA–0001963] at: *https://eere-exchange.energy.gov/.*

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Signed in Washington, DC, on July 27, 2018.

Valerie Reed,

Acting Director, Wind Energy Technologies Office.

[FR Doc. 2018–16453 Filed 7–31–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on National Wind Technology Center Facility and Infrastructure Investments

AGENCY: Wind Energy Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) number DE–FOA–0001959 regarding the National Wind Technology Center. The purpose of this RFI is to address the growing research and development (R&D) interest in the use of the National Renewable Energy Laboratory's (NREL's) National Wind Technology Center (NWTC) facilities for renewable energy, energy storage, and grid integration technology development and testing.

DATES: Responses to the RFI must be received by no later than 5:00pm (ET) on August 27, 2018.

ADDRESSES: Interested parties are to submit comments electronically to *NWTC_EERE_RFI@ee.doe.gov.* Include National Wind Technology Center Facility and Infrastructure Investments in the subject of the title. Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as an attachment to the email, and no more than 10 pages in length, 12 point font, 1 inch margins. Only electronic responses will be accepted. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Gary Nowakowski who can be reached at (720) 356–1732 or *Gary.Nowakowski@ee.doe.gov.* Further instruction can be found in the RFI document posted on EERE Exchange.

SUPPLEMENTARY INFORMATION: The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders on energy efficiency and renewable energy R&D testing needs and the associated equipment, facilities and infrastructure needed to ensure continued world class energy technology development at the NWTC. This is solely a request for information and NOT a Funding Opportunity Announcement (FOA). EERE is not accepting applications. The RFI is available at: *https://eere-exchange.energy.gov/.*

Confidential Business Information

Because information received in response to this RFI may be used to structure future programs, funding and/or otherwise be made available to the public, respondents are strongly advised to not include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response as detailed in the RFI [DE–FOA–0001959] at: *https://eere-exchange.energy.gov/.*

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Signed in Washington, DC, on July 27, 2018.

Valerie Reed,

Acting Director, Wind Energy Technologies Office.

[FR Doc. 2018–16454 Filed 7–31–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, August 25, 2018, 9:00 a.m.

ADDRESSES: Black Bear Inn & Suites, 1100 Parkway, Gatlinburg, Tennessee 37738.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 241–6932; E-mail: *Melyssa.Noe@orem.doe.gov.* Or visit the website at *https://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Welcome and Announcements
- Introduction of New Members
- Comments from the Deputy Designated Federal Officer
- Presentations from the DOE, Tennessee Department of Environment

and Conservation, and Environmental Protection Agency Liaisons

- Discussion of Board Mission, Accomplishments and Operations
- Presentation of Slate of Candidates for FY19 Officers
- Motions/Approval of June 13, 2018 Meeting Minutes
- Motions/Approval of Two Proposed Recommendations to DOE
- Public Comment Period
- Follow-on Discussion
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings.*

Issued at Washington, DC on July 27, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–16457 Filed 7–31–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Food, Conservation, and Energy Act of 2008 amended by the Agricultural Act of 2014. The Federal Advisory Committee Act requires that agencies publish these notices in the **Federal Register**.

DATES: August 22, 2018, 8:30 a.m.–5:30 p.m., August 23, 2018, 8:00 a.m.–1:30 p.m.

ADDRESSES: DoubleTree Crystal City, 300 Army Navy Drive, Arlington, VA 22202

FOR FURTHER INFORMATION CONTACT: Dr. Mark Elless, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; at (202) 586–6501 or Email: *Mark.Elless@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To develop advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Presentations from national laboratories and federal agencies on their work on the Bioeconomy Initiative and on the opportunities and challenges for biobased plastics R&D.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Dr. Mark Elless at (202) 586–6501 or Email: *Mark.Elless@ee.doe.gov at least 5 business days* prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The summary of the meeting will be available for public review and copying at *http://biomassboard.gov/committee/meetings.html.*

Issued at Washington, DC on July 27, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–16456 Filed 7–31–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12496–002]

Rugraw, LLC; Notice of Availability of the Final Environmental Impact Statement for the Lassen Lodge Hydroelectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Lassen Lodge Hydroelectric Project (FERC No. 12496–002), to be located on the upper South Fork Battle Creek in Tehama County, California, and has prepared a draft Environmental Impact Statement (EIS) for the project. The project would occupy no federal land or Indian reservations.

The final EIS contains staff's evaluations of the applicant's proposal and the alternatives for licensing the proposed Lassen Lodge Hydroelectric Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the final EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street NE, Washington, DC 20426. The final EIS also may be viewed on the Commission's website at *http://www.ferc.gov* under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Kenneth Hogan at (202) 502–8434 or at *Kenneth.Hogan@ferc.gov.*

Dated: July 25, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16397 Filed 7–31–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–525–000]

Gulf South Pipeline Company, LP; Notice of Application

Take notice that on July 13, 2018, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization to construct and operate the Willis Lateral Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Juan Eligio Jr., Supervisor of Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, by telephone at (713) 479–3480 or by email at *juan.eligio@bwpmlp.com;* or Payton Barrientos, Senior Regulatory Analyst, Gulf South Pipeline, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, by telephone at (713) 479–8157 or by email at *payton.barrientos@bwpmlp.com.*

The Willis Lateral Project consists of: (i) Approximately 19 miles of 24-inch-diameter natural gas pipeline, (ii) a new 15,876 horsepower Solar Mars 100 turbine engine at Gulf South's existing Goodrich Compressor Station, and appurtenant facilities, (iii) a new delivery meter and regulator station (M&R), and (iv) a new receipt M&R station at Gulf South's existing Goodrich Compressor Station site. The project will allow Gulf South to provide up to 200,000 dekatherms per day of firm transportation service pursuant to Rate Schedule Firm Transportation Service to Entergy Texas, Inc.'s Montgomery County Power Station Project, which will be capable of providing nearly one gigawatt of electricity, proposed to be located on Entergy's existing Lewis Creek Power Station site near Willis, Texas. The estimated cost of the project will be $96,178,176.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: August 16, 2018.

Dated: July 26, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16460 Filed 7–31–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10661–050]

Indiana Michigan Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New

License and Commencing Pre-filing Process.

b. *Project No.:* 10661–050.

c. *Dated Filed:* June 4, 2018.

d. *Submitted By:* Indiana Michigan Power Company.

e. *Name of Project:* Constantine Project.

f. *Location:* The Constantine Project is located on the St. Joseph River in the Village of Constantine, Michigan. The project does not occupy federal land.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. Potential *Applicant Contact:* David Hoffman, Director Field & Support Services, c/o Jonathan Magalski, Environmental Specialist Consultant, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215; (614) 716–2240; *jmmagalski@aep.com.*

i. *FERC Contact:* Lee Emery at (202) 502–8379 or email at *lee.emery@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Indiana Michigan Power Company as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Indiana Michigan Power Company filed with the Commission a Pre-Application Document (PAD); including a proposed process plan and schedule, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents 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.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–10661–050.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by October 2, 2018.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date and Time: Wednesday, August 29, 2018 at 9:00 a.m.

Location: Village Hall, 115 White Pigeon Street, Constantine, Michigan 49042.

Phone Number: (269) 435–2085.

Evening Scoping Meeting

Date and Time: Tuesday, August 28, 2018 at 6:30 p.m.

Location: Village Hall, 115 White Pigeon Street, Constantine, Michigan 49042.

Phone Number: (269) 435–2085.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an Environmental Site Review of the project on Tuesday, August 28, 2018, starting at 9:00 a.m. All participants should meet at the Constantine Project powerhouse, located at 155 North Washington Avenue, Constantine, Michigan 49042. Please notify Jonathan Magalski at *jmmagalski@aep.com* (preferred contact) or at (614) 716–2240

by August 17, 2018, if you plan to attend the environmental site review.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in paragraph n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: July 25, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16396 Filed 7–31–18; 8:45 am]

BILLING CODE 6717–01–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 the New York Independent System Operator, Inc. (NYISO):

NYISO Electric System Planning Working Group Meeting

August 8, 2018, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2018-08-08.*

NYISO Business Issues Committee Meeting

August 13, 2018, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2018-08-13.*

NYISO Operating Committee Meeting

August 17, 2018, 10:00 a.m.–2:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2018-08-17*

NYISO Electric System Planning Working Group Meeting

August 22, 2018, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2018-08-22*

NYISO Management Committee Meeting

August 29, 2018, 10:00 a.m.–2:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2018-08-29*

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Independent System Operator, Inc., Docket No. ER17–2327.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: July 26, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16455 Filed 7–31–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP18–524–000, CP12–39–000]

D'Lo Gas Storage, LLC; Notice of Application

Take notice that on July 13, 2018, D'Lo Gas Storage, LLC (D'Lo) 1000 East St. Mary Blvd., Lafayette, Louisiana 70503, filed in Docket No. CP18–524–000, an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations to approve an amendment to the originally certificated Project design issued in Docket No. CP12–39–000. Specifically, D'Lo proposes to eliminate the Gulf South Interconnect Lateral, relocate two primary source water wells, and relocate two primary brine disposals wells, all located in Simpson and Rankin Counties, Mississippi. Additionally, D'Lo request a new Rate Schedule for Firm Wheeling Service and an extension of the date by which D'Lo's approved facilities must be ready for service, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Theo B. Bean, IV, Manager, D'Lo Gas Storage, LLC, 1000 East St. Mary Blvd., Lafayette, Louisiana 70503, by phone (337) 234–4122, by fax (337) 234–2330 or *tbean@dlogasstorage.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA

for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 16, 2018.

Dated: July 26, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16459 Filed 7–31–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–007]

North American Electric Reliability Corporation; Notice of Staff Review of Enforcement Programs

Commission staff coordinated with the staff of the North American Electric Reliability Corporation (NERC) to conduct the annual oversight of the Find, Fix, Track and Report (FFT) program, as outlined in the March 15, 2012 Order,[1] and the Compliance Exception (CE) Program, as proposed by NERC's September 18, 2015 annual Compliance Filing.[2] The Commission supported NERC's plan to coordinate with Commission staff to review the same sample of possible violations, thereby reducing the burden on the Regional Entities of providing evidence for two different samples. Furthermore, NERC and Commission staff agreed to exclude the Southwest Power Pool Regional Entity (SPP–RE) from the survey, reducing the burden on SPP–RE as it focused efforts on a planned and approved termination of its responsibilities as a Regional Entity. Commission staff reviewed a sample of 26 FFT possible violations out of 76 FFT possible violations posted by NERC between October 2016 and September 2017 and a sample of 100 CE instances of noncompliance out of 740 CE instances of noncompliance posted by NERC between October 2016 and September 2017.

Commission staff believes that the FFT and CE programs are meeting expectations with limited exceptions. Sampling for the 2017 program year indicated that the Regional Entities appropriately included all but two of the 126 sampled possible violations (98.4 percent) in the FFT and CE programs and that all but one of the 126 possible violations (99.2 percent) have been adequately remediated, with the remaining CE to be adequately remediated once the ongoing mitigation is completed. Commission staff's sample analysis indicated a decreasing number of documentation concerns, particularly with regard to the quality of the information contained in the FFT and/or CE postings. For example, Commission staff found that a few FFT or CE issues still lacked some of the information requested in NERC's Guidance for Self Reports document and necessary for the posted FFT or CE.[3] This includes information such as start or end dates, or root cause. Specifically, the identification of root cause in FFTs and CEs has improved significantly over the past four years, moving from 38 percent missing an identification of root cause to less than 1 percent. Commission staff subsequently reviewed the supporting information for these FFTs or CEs, which provided a majority of the missing information. Commission staff ultimately agreed with the final risk determinations for 124 of the 126 samples. Commission staff also noted a significant improvement in the clear identification of factors affecting the risk prior to mitigation (such as potential and actual risk), and actual harm, which was identified in all samples. In addition, Commission staff noted that the FFTs and CEs sampled

[1] *North American Electric Reliability Corp.,* 138 FERC ¶ 61,193, at P 73 (2012) (discussing Commission plans to survey a random sample of FFTs submitted each year to gather information on how the FFT program is working).

[2] *North American Electric Reliability Corp.,* Docket No. RC11–6–004, at 1 (Nov. 13, 2015) (delegated letter order) (stating ''NERC's intention to combine the evaluation of Compliance Exceptions with the annual sampling of FFTs to further streamline oversight of the FFT and compliance exception programs'').

[3] *North American Electric Reliability Corp.,* 138 FERC ¶ 61,193, at P 60 (2012).

did not contain any material misrepresentations by the registered entities.

Dated: July 25, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16398 Filed 7–31–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–531–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on July 19, 2018, Florida Gas Transmission Company, LLC (FGT), 1300 Main St., Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, 157.210, and 157.211 of the Commission's regulations under the Natural Gas Act (NGA) and Columbia's blanket certificate issued in Docket No. CP82–553–000, for authorization to (1) construct, install, own, maintain and operate, certain natural gas pipeline facilities (including 3.4 miles of mainline looping) and appurtenant facilities in Hillsborough and Polk Counties, Florida and (2) install an interconnection and appurtenant facilities for gas delivery to a new Meter and Regulation station to be constructed/owned/operated by Florida Public Utilities (FPU) in Martin County, Florida. The approximate cost of the Okeechobee Expansion Project is approximately $19,500,000. This Project will enable FGT to provide additional capacity of 12,000 million British thermal units per day (MMBtu/d) of available firm transportation service to the proposed interconnection with FPU in Martin County, Florida, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application may be directed to Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, at (713) 989–2605 or fax (713) 989–1205 or *Blair.Lichtenwalter@energytransfer.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: July 26, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16461 Filed 7–31–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice for Proposed Model Family Foster Home Licensing Standards

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice; Request for Comments.

SUMMARY: The Family First Prevention Services Act (FFPSA) directs the U.S. Department of Health and Human Services (HHS) to identify ''reputable model licensing standards with respect to the licensing of foster family homes. In response to this directive, the Children's Bureau (CB) solicits comments on the proposed National Model Family Foster Home Licensing Standards.

DATES: Submit comments on or before October 1, 2018.

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

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. All comments received will be posted without change to *https://www.regulations.gov*, including any personal information provided.
- *Email: CBComments@acf.hhs.gov.* Include [docket number and/or RIN number] in subject line of the message.
- *Mail:* Submit written comments to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please be aware that mail may take an additional 3 to 4 days to process due to security screening of mail.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Director, Policy Division, Children's Bureau, 330 C Street SW, Washington, DC 20201. Email address: *cbcomments@acf.hhs.gov.* Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Overview of the Proposed National Model Family Foster Home Licensing
III. Standards Summary of the Proposed National Model Foster Care Licensing Standards

I. Background

(1) Legislative Context

The President signed the Bipartisan Budget Act of 2018, Public Law (Pub. L.) 115–123 into law on February 9, 2018. Public Law 115–123 includes the FFPSA in Division E, Title VII. Section 50731 of the FFPSA directs HHS to ''identify reputable model licensing standards with respect to the licensing of foster family homes (as defined in section 472(c)(1) of the Social Security Act).''

By April 1, 2019, title IV–E agencies, which include all states and 12 tribes, must provide the HHS specific and detailed information about:

○ Whether the state or tribal agency foster family home licensing standards are consistent with the model licensing standards identified by HHS, and if not, the reason; and

○ Whether the state or tribal agency waives non-safety licensing standards for relative foster family homes (pursuant to waiver authority provided by section 471(a)(10)(D) of the Act), and if so, how caseworkers are trained to use the waiver authority and whether the agency has developed a process or provided tools to assist caseworkers in waiving these non-safety standards to quickly place children with relatives.

States and tribes have a long history of developing and implementing their own foster family home licensing standards. These standards are typically included in statutes, codes, or regulations, but may also be included in policy documents or guidance. In reference to the title IV–E program, section 471(a)(10) of the Act requires title IV–E agencies to develop plans that provide for the establishment and maintaining of standards for foster family homes and child care institutions. These standards must be reasonably in accord with related standards developed by national organizations, including standards related to admission policies, safety, sanitation, protection of civil rights, and permit the use of the reasonable prudent parent standard.

(2) Reviewing Foster Family Home Licensing Standards

We are proposing one set of standards for comment to apply to relatives and non-relatives, as well as state and tribal title IV–E agencies.

Prior to drafting these standards, CB:

- Reviewed several state and tribal foster family licensing standards that represented a mix of population densities, state and county administered states, and a range of geographic locations;
- examined the ''Model Family Foster Home Licensing Standards'' published by the National Association for Regulatory Administration (NARA Standards);
- reviewed the ''Development and Implementation of Tribal Foster Care Standards'' published by the National Indian Child Welfare Association (NICWA); and
- consulted guidelines, recommendations, and best practices for foster care services including the following:
- Council on Accreditation Family Foster Care and Kinship Care Program Accreditation Guidelines; and
- Child Welfare League of America (CWLA) Standards of Excellence for Family Foster Care Services.

The CB relied heavily upon the NARA standards in drafting the proposed National Model Family Foster Home Licensing Standards. The NARA standards were developed by attorneys at Generations United and the American Bar Association who researched family foster care licensing standards in state codes, regulations, and policies for each state and the District of Columbia.[1] The current NARA standards use model language from state licensing standards and language from the CWLA and the Council on Accreditation with the goal to create reasonable and achievable safety standards for family foster home licensing. NICWA assisted the Council on Accreditation with developing foster care and kinship care standards used to accredit public and private agencies that address the unique needs of Native children and account for the protections of the Indian Child Welfare Act.

CB assessed whether these materials shared purposes, standards, and categories to support the conclusion that the NARA standards were appropriate to use as a main source for the National Model Family Foster Home Licensing Standards. Through this review, CB determined that while it is important for standards to be flexible for title IV–E agency implementation, overall, the standards reviewed shared many commonalities. Further, the NARA standards are based in significant research and input from experts in the field; therefore, we consider them the best available resource to base a federal standard on, and reasonably flexible for title IV–E agency implementation.

CB did not examine the following subject areas because this was outside the scope of the legislative requirement:

- Foster home licensing procedures;
- Emergency placement procedures;
- Re-licensure procedures;
- Procedures for pre-service training;
- Care of children after placement in a licensed foster home; and
- Post-licensing requirements, such as foster parent recordkeeping and reporting.

II. Overview of the Proposed National Model Family Foster Home Licensing Standards

The proposed standards are categorized into eight categories that closely resemble the NARA standards:

A. Foster Home Eligibility
  a. Threshold Requirements
  b. Physical and Mental Health
  c. Background Checks
  d. Home Study
B. Foster Family Home Health and Safety
  a. Living Space
  b. Condition of Home
C. Foster Home Capacity
D. Foster Home Sleeping Arrangements
E. Emergency Preparedness, Fire Safety, and Evacuation Plans
F. Transportation
G. Training
H. Foster Parent Assurances

These categories cover the essential components of licensing a foster family in terms of ensuring the applicant's capacity to care for a child in foster care, and also provide parameters for licensing the physical home of the family to ensure it is appropriate and safe for a child in foster care.

The National Model Family Foster Home Licensing Standards, based on the NARA Standards, are designed to be broad and flexible enough to respond to individual circumstances, state and tribal jurisdictions, and help ensure children in out-of-home care have safe and appropriate homes. The standards do not include the many other agency practices for how to conduct assessments, good practice standards, guidelines on re-licensing, or other requirements that must be undertaken with licensing foster family homes. In addition, there are numerous state and federal laws that agencies must consider when licensing foster family homes that we did not address. We encourage agencies to utilize best practices, such as engaging tribal communities or others as appropriate in licensing families; however, these standards do not address such practices.

[1] For the research results, please see: *http://www.grandfamilies.org/Portals/0/Improving%20Foster%20Care%20Licensing%20Standards.pdf.*

III. Summary of the Proposed National Model Foster Care Licensing Standards

Subject standard	Standard and summary
Foster Home Eligibility	A. Foster Home Eligibility: A family foster home license includes the following: a. Threshold Requirements: i. Applicants must be age 18 or older. ii. Applicants must have income or resources to make timely payments for shelter, food, utility costs, clothing, and other household expenses prior to the addition of a child or children in foster care. iii. Applicants must be able to communicate with the child in the child's own language and applicants must be able to communicate with the title IV–E agency, health care providers, and other service providers. iv. At least one applicant in the home must have functional literacy, such as having the ability to read medication labels.
Summary—Foster Home Eligibility	The proposed eligibility standards provide threshold requirements for a family foster home license to establish a first step in assessing the applicant's age, financial stability, and ability to communicate with the child and agency. We propose that adult applicants are financially stable to meet their family's needs prior to placing a child in the home. We proposed communication standards which are flexible for both the applicant and agency in that applicants must be able to follow agency and service provider instructions as well as communicate directly with a child. The proposed standards do not include requirements for English literacy so as not to dissuade potential foster family applicants. However, we propose functional literacy to ensure at least one of the applicants has the ability to read and write at the level necessary to participate effectively in the community in which they live.
Foster Home Eligibility—Physical and Mental Health.	b. Physical and Mental Health: All applicants must have recent (conducted within the prior 12 months) physical exams from a licensed health care professional that indicate that the applicants are capable of caring for an additional child or children. i. All household members must disclose current mental health and/or substance abuse issues. ii. All household members must provide information on their physical and mental health history, including any history of drug or alcohol abuse or treatment. iii. The title IV–E agency may require further documentation and/or evaluation to determine the suitability of the home. iv. All children who are household members must be up to date on immunizations consistent with the recommendations of the American Academy of Pediatrics, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the American Academy of Family Physicians, unless the immunization is contrary to the child's health as documented by a licensed health care professional.
Summary—Foster Home Eligibility—Physical and Mental Health.	The proposed physical and mental health standards ensure each applicant is physically, mentally, and emotionally capable of caring for an additional child or children through a required physical exam. We are not requiring that household members undergo a physical exam, however, they must provide a health history, including any history of drug or alcohol abuse or treatment.
Foster Home Eligibility—Background Checks	c. Background Checks: i. Applicants must submit to criminal record and child abuse and neglect registry checks as required in section 471(a)(20) of the Social Security Act (the Act).
Summary—Foster Home Eligibility—Background Checks.	The proposed background check standards mirror the requirements under section 471(a)(20) of the Act which requires title IV–E agencies to perform criminal and child abuse and neglect registry background checks as part of meeting the IV–E requirements. The state or tribe must not grant final approval to the applicant if a record check reveals a felony conviction for: • Child abuse or neglect; • Spousal abuse; • A crime against children (including child pornography); • A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; • Physical assault, battery, or a drug-related offense within the last five (5) years; and Title IV–E agencies must check any child abuse and neglect registry maintained by the state or tribe for information on any applicant and on any other adult living in the prospective foster home. Further, title IV–E agencies must request any other state or tribe in which any such applicant or other adult has resided in the preceding five (5) years.
Home Study	d. Home Study: Applicant must have completed an agency home study, which is a written comprehensive family assessment in collaboration with the applicants to include the following elements:

Subject standard	Standard and summary
	i. At least one scheduled on-site visit to assess the home to ensure that it meets the state, tribal and/or local standards applicable to the safety and care of the home. ii. At least one scheduled in home interview for each household member to observe family functioning and assess the family's capacity to meet the needs of a child or children in foster care. iii. The title IV–E agency has discretion on whether to interview or observe each household member based on his or her age and development. iv. Multiple applicant references that attest to the capability of the applicant to care for the child, including at least one from a relative and one from a non-relative.
Summary—Home Study	We propose a broad home study standard that requires the title IV–E agency to conduct in-person and on-site interviews and obtain references for all applicants. Most states have home study requirements in law and regulation which include explicit home study and interview standards.
Foster Family Home Health and Safety	B. Foster Family Home Health and Safety: a. Living Space: The home must be a house, mobile home, housing unit or apartment occupied by an individual or a family. The home, grounds, and all structures on the grounds of the property must in a reasonable state of repair within community standards. The home must have: i. A continuous supply of safe drinking water. ii. A properly operating kitchen with a sink, refrigerator, stove, and oven; iii. At least one properly operating bathroom with a toilet, sink and tub or shower. iv. Heating and/or cooling as required by the geographic area, consistent with accepted community standards and in safe operating condition. v. A working phone or access to a working phone in close walking proximity. b. Condition of the Home: The applicants' home, grounds, and all structures on the grounds of the property must be properly maintained in a clean, safe, and sanitary condition and in a reasonable state of repair within community standards. The interior and exterior must be free from dangerous objects and conditions, and from hazardous materials. The home must meet the following requirements: i. Have adequate lighting, ventilation and proper trash and recycling disposal. ii. Be free from rodents and insect infestation. iii. Proper water heater temperature. iv. Weapons and ammunition (separately) stored, locked, unloaded, and inaccessible to children. v. Pets are vaccinated in accordance with state, tribal and/or local law. vi. Swimming pools, hot tubs, and spas must meet the following to ensure they are safe and hazard free (and additionally must meet all state, tribal and/or local safety requirements): 1. Swimming pools must have a barrier on all sides. 2. Swimming pools must have their methods of access through the barrier equipped with a safety device, such as a bolt lock. 3. Swimming pools must be equipped with a life saving device, such as a ring buoy. 4. If the swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system. 5. Hot tubs and spas must have safety covers that are locked when not in use. vii. Prevent the child's access, as appropriate for his or her age and development, to all medications, poisonous materials, cleaning supplies, other hazardous materials, and alcoholic beverages. The title IV–E agency may include other specific standards as appropriate to their jurisdiction.
Summary—Foster Family Home Health and Safety.	Foster Family Home Health and Safety—These proposed standards apply to the foster family home itself, which includes the grounds and all structures found on the grounds. These proposed standards are written broadly to: (1) Address the large amount of variance in home hazards across jurisdictions; and (2) prevent potential biases against rural or urban families. These standards are divided into two sections: Living space and condition of the home. The NARA standards as well as the state standards reviewed include specific requirements to address jurisdictional and geographical concerns. For example, requirements around water hazards such as swimming pools may not be a priority in all jurisdictions. a. Living Space—The proposed living space standards are flexible in order to determine that a home includes basic essentials such as safe drinking water (which may include water from a municipal drinking source, a private well, or other source), proper kitchen and bath facilities and such. This ensures that the home is a suitable and safe foster family home, and allows potential foster families to reside in a variety of types of homes and locations, such as low-income or rural areas, may qualify as foster parents. A key factor is whether the home, grounds, and all structures on the grounds of the property are in a reasonable state of repair within community standards taking into account neighborhood norms while being mindful of any potential health and safety risks. b. Condition of the Home—The proposed condition of the home standards, address the overall condition and safety of the home to ensure the home is safe and in a reasonable state of repair considering the community where the home is located. Housing and living arrangements must be safe and clean, and hazardous conditions mitigated. The proposed standards include specific safety requirements for pools, hot tubs and spas as these pose a particular preventable danger to children.

Subject standard	Standard and summary
Foster Home Capacity	C. Foster Home Capacity: The total number of children in foster care in a family foster home, must not exceed six (6) consistent with section 472(c)(1)(A)(ii)(III) of the Act. Per section 472(c)(1)(B) of the Act, the number of foster children cared for in a foster family home may exceed this numerical limitation at the option of the title IV–E agency for any of the following reasons: a. To allow a parenting youth in foster care to remain with the child of the parenting youth. b. To allow siblings to remain together. c. To allow a child with an established meaningful relationship with the family to remain with the family. d. To allow a family with special training or skills to provide care to a child who has a severe disability.
Summary—Foster Home Capacity	Foster Home Capacity—The proposed foster home capacity standards mirror the requirements section 472(c)(1)(A)(ii)(III) that the total number of children in a foster family home, must not exceed six (6). Per section 472(c)(1)(B) of the Act, the title IV–E agency may make an exception to this numerical limitation for the following reasons: • To allow a parenting youth in foster care to remain with the child of the parenting youth. • To allow siblings to remain together. • To allow a child with an established meaningful relationship with the family to remain with the family. • To allow a family with special training or skills to provide care to a child who has a severe disability.
Foster Home Sleeping Arrangements	D. Foster Home Sleeping Arrangements: Applicants must provide a safe sleeping space including sleeping supplies, such as mattress and linens, for each individual child, as appropriate for the child's needs and age and similar to other household members. Foster parents must not co-sleep or bed-share with infants.
Summary—Foster Home Sleeping Arrangements.	The proposed sleeping arrangement standard ensures children in foster care sleep in safe and comfortable sleeping spaces with appropriate furnishings to meet their basic needs and ensure privacy. All children in the home must be treated equitably. For example, children in foster care should not sleep in public living spaces if other children have their own bedrooms. Further, sleeping arrangements should be age and developmentally appropriate for the children who are placed in the home. Co-sleeping or bed-sharing, when a parent(s) and infant share a sleeping surface (such as a bed, sofa or chair), is prohibited. We included this prohibition because approximately 3,500 infants (children under 12 months of age) die annually in the United States from sleep-related causes, such as sudden infant death syndrome (SIDS) and accidental suffocation and strangulation in bed.[2] Both bed sharing with infants and sleeping with infants sleeping on couches or armchairs increase the risk of infant death, including sudden infant death syndrome (SIDS), entrapment, and suffocation. Room-sharing, *i.e.,* when an infant shares a room with a parent(s), but sleeps on a separate sleeping surface is not prohibited as it is considered a safe sleep practice that is linked to a reduced risk of SIDS.[3]
Emergency Preparedness, Fire Safety, and Evacuation Plans.	E. Emergency Preparedness, Fire Safety, and Evacuation Plans: The applicant must have emergency preparedness plans and items in place as appropriate for the home's geographic location. The applicants' home must meet the following fire safety and emergency planning requirements: a. Have at least one smoke detector on each level of occupancy of the home and at least one near all sleeping areas. b. Have at least one carbon monoxide detector on each level of occupancy of the home and at least one near all sleeping areas. c. Have at least one operable fire extinguisher that is readily accessible. d. Be free of obvious fire hazards, such as defective heating equipment or improperly stored flammable materials. e. Have a written emergency evacuation plan to be reviewed with the child and posted in a prominent place in the home. f. Maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home. g. Maintain first aid supplies.
Summary—Emergency Preparedness, Fire Safety, and Evacuation Plans.	Emergency Preparedness, Fire Safety, and Evacuation Plans—The proposed standards help protect children and household members from harm in the event of an emergency, a fire, or a need to evacuate. The proposed standards are written broadly allowing them to be tailored to unique emergencies, such as natural disasters, that may occur in specific jurisdictions. Safety procedures and emergency plans, and the communication thereof, increase the probability of safety and injury prevention for household members. Emergency readiness information provided by the Department of Homeland Security is available at *http://www.ready.gov*.
Transportation	F. Transportation: Applicants must ensure that the family has reliable, legal and safe transportation with safety restraints, as appropriate for the child. Reliable transportation would include a properly maintained vehicle or access to reliable public transportation, if one is owned; legal transportation would include having a valid driving license, insurance and registration as appropriate and safe transportation would include safety restraints and only adults in the home having a driving record in good standing transport the child.

Subject standard	Standard and summary
Summary—Transportation Standards	The proposed transportation standards focus broadly on the applicant having a reliable, legal, and safe mode of transportation for a child in foster care to attend appointments, visitation, and meetings. We also propose that only adults in the home be permitted to transport children in foster care and only those having a driving record in good standing. We specifically avoid proposing standards that could impact a foster parent based on geographic location and income. For example, some states require foster parents to have their own vehicle. However, applicants in states with a high urban population may not have access to or need a vehicle. Rather, they rely upon public transportation.
Training	G. Training: a. Applicants must complete pre-licensing training on the following topics: legal rights, roles, responsibilities and expectations of foster parents; agency structure, purpose, policies, and services; laws and regulations; the impact of childhood trauma; managing child behaviors; first aid (including cardiopulmonary resuscitation (CPR) for the ages of the children in placement) and medication administration; and the importance of maintaining meaningful connections between the child and parents, including regular visitation. Foster parents must participate in ongoing training to receive instruction to support their parental roles and ensure the parent is up to date with agency requirements. Further, this training may also include child-specific training and/or may address issues relevant to the general population of children in foster care.
Summary—Training	The proposed training standards include both pre-licensing and ongoing training and include mandatory training topics. The purpose of the pre-licensing training standards is to provide information to applicants so they can make an informed decision about their commitment to foster a child. In addition, the pre-service training is to prepare the applicant to be licensed as a foster parent. This includes training on the reasonable and prudent parent standard per section 471(a)(24) of the Act. The ongoing training is to ensure the parent receives ongoing instruction to support their parental roles and remain up to date on policies, requirements, and services. Therefore, there are no mandatory topics, as these depend on agency priorities and specific individual needs.
Foster Parent Assurances	H. Foster Parent Assurances: Applicants must agree to comply with their roles and responsibilities as discussed with the title IV–E agency once a child is placed in their care. The title IV–E agency must require assurances including: a. Applicants will not use corporal or degrading punishment b. Applicants will not use any illegal substances, abuse alcohol by consuming it in excess amounts, or abuse legal prescription and/or nonprescription drugs by consuming them in excess amounts or using them contrary to as indicated. b. Applicants and their guests will not smoke in the family foster home, in any vehicle used to transport the child, or in the presence of the child in foster care. c. Applicants will adhere to the title IV–E agency's reasonable and prudent parent standard per section 472(c)(1)(A)(ii)(I) of the Act.
Summary—Foster Parent Assurances	There are four proposed foster parent assurances are broadly written to apply across title IV–E jurisdictions which cover corporal punishment, alcohol and drug use, the reasonable and prudent parent standard and smoking. Assurances help potential foster family to have a clear understanding of expectations prior to approval as a foster home, cover behaviors which cannot be verified as part of the home study and typically are expectations after a home is licensed. Title IV–E agencies may wish to develop additional assurances as appropriate to their jurisdiction.

Dated: July 24, 2018.

Steven Wagner,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2018–16380 Filed 7–31–18; 8:45 am]

BILLING CODE 4148–25–P

[2] Task Force on Sudden Infant Death Syndrome. ''SIDS and Other Sleep-Related Infant Deaths: Updated 2016 Recommendations for a Safe Infant Sleeping Environment.'' *Pediatrics,* 138, no. 5 (2016): 1, *http://pediatrics.aappublications.org/content/138/5/e20162938.*

[3] Ibid., 2–4.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0007]

Outsourcing Facility Fee Rates for Fiscal Year 2019

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2019 rates for the establishment and re-inspection fees related to entities that compound human drugs and elect to register as outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The FD&C Act authorizes FDA to assess and collect an annual establishment fee from outsourcing facilities, as well as a re-inspection fee for each re-inspection of an outsourcing facility. This document establishes the FY 2019 rates for the small business establishment fee ($5,461), the non-small business establishment fee ($18,375), and the re-inspection fee ($16,382) for outsourcing facilities; provides information on how the fees for FY 2019 were determined; and describes the payment procedures outsourcing facilities should follow. These fee rates are effective October 1, 2018, and will remain in effect through September 30, 2019.

FOR FURTHER INFORMATION CONTACT: *For more information on human drug compounding and outsourcing facility fees:* Visit FDAs website at: *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm.*

For questions relating to this notice: Melissa Hurley, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14202J, Silver Spring, MD 20993–0002, 240–402–4585.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Quality and Security Act (DQSA) contains important provisions relating to the oversight of compounding human drugs. Title I of this law, the Compounding Quality Act, created a new section 503B in the FD&C Act (21 U.S.C. 353b). Under section 503B of the FD&C Act, a human drug compounder can become an ''outsourcing facility.''

Outsourcing facilities, as defined in section 503B(d)(4) of the FD&C Act, are facilities that meet all of the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If the conditions of section 503B are met, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) Section 502(f)(1) (21 U.S.C. 352(f)(1)) concerning the labeling of drugs with adequate directions for use; (2) section 505 (21 U.S.C. 355) concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs); and (3) section 582 (21 U.S.C. 360eee–1) concerning drug supply chain security requirements. Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) concerning current good manufacturing practice requirements for drugs.

Section 744K of the FD&C Act (21 U.S.C. 379j–62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities: (1) An annual establishment fee from each outsourcing facility and (2) a re-inspection fee from each outsourcing facility subject to a re-inspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a qualified applicant may pay a reduced small business establishment fee (see section 744K(c)(4) of the FD&C Act).

FDA announced in the **Federal Register** of November 24, 2014 (79 FR 69856), the availability of a final guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' The guidance provides additional information on the annual fees for outsourcing facilities and adjustments required by law, re-inspection fees, how to submit payment, the effect of failure to pay fees, and how to qualify as a small business to obtain a reduction of the annual establishment fee. This guidance can be accessed on FDA's website at: *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM391102.pdf.*

II. Fees for FY 2019

A. Methodology for Calculating FY 2019 Adjustment Factors

1. Inflation Adjustment Factor

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: One based on FDA's payroll costs and one based on FDA's non-payroll costs for the first 3 of the 4 previous fiscal years. The payroll component of the annual inflation adjustment is calculated by taking the average change in FDA's per-full time equivalent (FTE) personnel compensation and benefits (PC&B) in the first 3 of the 4 previous fiscal years (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per fiscal year to determine the average PC&B per FTE.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2019. The 3-year average is 2.4152 percent.

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

Fiscal year	2015	2016	2017	3-year average
Total PC&B	$2,232,304,000	$2,414,728,159	$2,581,551,000	
Total FTE	15,484	16,381	17,022	
PC&B per FTE	$144,168	$147,408	$151,660	
Percent change from previous year	2.1136%	2.2474%	2.8845%	2.4152%

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 2.4152 percent should be multiplied by the proportion of PC&B to total costs of an average FDA FTE for the same 3 fiscal years.

TABLE 2—FDA PC&BS AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

Fiscal year	2015	2016	2017	3-year average
Total PC&B	$2,232,304,000	$2,414,728,159	$2,581,551,000	
Total Costs	$4,510,565,000	$4,666,236,000	$5,104,580,000	
PC&B Percent	49.4906%	51.7490%	50.5732%	50.6043%

The payroll adjustment is 2.4152 percent multiplied by 50.6043 percent, or 1.2222 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2019 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all non-PC&B costs to total costs of an average FDA FTE for the same period.

Table 2 provides the summary data for the percent change in the specified CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its website: *https://data.bls.gov/cgi-bin/surveymost?cu*. The data can be viewed by checking the box marked ''U.S. All

items, 1982–84 = 100—CUUR0000SA0''
and then selecting ''Retrieve Data.''

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

Year	2015	2016	2017	3-year average
Annual CPI	237.017	240.007	245.120	
Annual Percent Change	0.1187%	1.2615%	2.1304%	1.1702%

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 1.1702 percent should be multiplied by the proportion of all non-PC&B costs to total costs of an average FTE for the same 3 fiscal years. The proportion of all non-PC&B costs to total costs of an average FDA FTE for FYs 2015 to 2017 is 49.3957 percent (100 percent − 50.6043 percent = 49.3957 percent). Therefore, the non-pay adjustment is 1.1702 percent times 49.3957 percent, or 0.5780 percent.

The PC&B component (1.2222 percent) is added to the non-PC&B component (0.5780 percent), for a total inflation adjustment of 1.8002 percent (rounded). Section 744K(c)(2)(A)(i) of the FD&C Act specifies that one is added to that figure, making the inflation adjustment 1.018002.

Section 744K(c)(2)(B) of the FD&C Act provides for this inflation adjustment to be compounded after FY 2015. This factor for FY 2019 (1.8002 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2018 (7.2835 percent), as published in the **Federal Register** of August 2, 2017 (82 FR 35962 at 35965). The result of this multiplication of the inflation factors for the 4 years since FY 2015 (1.018002 × 1.072835) becomes the inflation adjustment for FY 2019. For FY 2019, the inflation adjustment is 9.2148 percent (rounded). We then add one, making the FY 2019 inflation adjustment factor 1.092148.

2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) of the FD&C Act provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the amount that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act. Additionally, section 744K(c)(5)(A) states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2019, FDA must estimate: (1) The number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2019 and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (*i.e.,* if each entity that registers as an outsourcing facility for FY 2019 were to pay the inflation-adjusted fee amount of $16,382).

With respect to (1), FDA estimates that 14 entities will qualify for small business exceptions and will pay the reduced fee for FY 2019. With respect to (2), to estimate the total number of entities that will register as outsourcing facilities for FY 2019, FDA used data submitted by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 82 outsourcing facilities, including 14 small businesses, will be registered with FDA in FY 2019.

If the projected 82 outsourcing facilities paid the full inflation-adjusted fee of $16,382, this would result in total revenue of $1,343,324 in FY 2019 ($16,382 × 82). However, 14 of the entities that are expected to register as outsourcing facilities for FY 2019 are projected to qualify for the small business exception and to pay one-third of the full fee ($5,461 × 14), totaling $76,454 instead of paying the full fee ($16,382 × 14), which would total $229,348. This would leave a potential shortfall of $152,894 ($229,348 − $76,454).

Additionally, section 744K(c)(5)(A) of the FD&C Act states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year. FDA has determined that it is appropriate to credit excess fees collected from the last completed fiscal year, due to the inability to conclusively determine the amount of excess fees from the fiscal year that is in progress at the time this calculation is made. This crediting is done by comparing the small business adjustment factor for the last completed fiscal year, FY 2017 ($1,137), to what would have been the small business adjustment factor for FY 2017 ($892) if FDA had estimated perfectly.

The calculation for what the small business adjustment would have been if FDA had estimated perfectly begins by determining the total target collections (15,000 × [inflation adjustment factor] × [number of registrants]). For the most recent complete fiscal year, FY 2017, this was $1,219,449 ($15,837 × 77). The actual FY 2017 revenue from the 77 total registrants (*i.e.,* 71 registrants paying FY 2017 non-small business establishment fee and six small business registrants) paying establishment fees is $1,156,101. $1,156,101 is calculated as follows: (FY 2017 Non-Small Business Establishment Fee adjusted for inflation only) × (total number of registrants in FY 2017 paying Non-Small Business Establishment Fee) + (FY 2017 Small Business Establishment Fee) × (total number of small business registrants in FY 2017 paying Small Business Establishment Fee). $15,837 × 71 + $5,279 × 6 = $1,156,101. This left a shortfall of $63,348 from the estimated total target collection amount ($1,219,449 − $1,156,101). $63,348 divided by the total number of registrants in FY 2017 paying Standard Establishment Fee (71) equals $892.

The difference between the small business adjustment factor used in FY 2017 and the small business adjustment factor that would have been used had FDA estimated perfectly; is $245 ($1,137 − $892). The $245 (rounded to the nearest dollar) is then multiplied by the number of actual registrants who paid the standard fee for FY 2017 (71), which provides us a total excess collection of $17,380 in FY 2017.

Therefore, to calculate the small business adjustment factor for FY 2019, FDA subtracts $17,380 from the projected shortfall of $152,894 for FY 2019 to arrive at the numerator for the

small business adjustment amount, which equals $135,514. This number divided by 68 (the number of expected non-small businesses for FY 2019) is the small business adjustment amount for FY 2019, which is $1,993 (rounded to the nearest dollar).

B. FY 2019 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Re-Inspection Fee

1. Establishment Fee for Qualified Small Businesses [1]

The amount of the establishment fee for a qualified small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by three (see section 744K(c)(4)(A) and (c)(1)(A) of the FD&C Act). The inflation adjustment factor for FY 2019 is 1.092148. See section II.A.1 for the methodology used to calculate the FY 2019 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2019 is one third of $16,382, which equals $5,461 (rounded to the nearest dollar).

2. Establishment Fee for Non-Small Businesses

Under section 744K(c) of the FD&C Act, the amount of the establishment fee for a non-small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year, and plus or minus an adjustment factor to account for over- or under-collections due to the small business adjustment factor in the prior year. The inflation adjustment factor for FY 2019 is 1.092148. The small business adjustment amount for FY 2019 is $1,993. See section II.A.2 for the methodology used to calculate the small business adjustment factor for FY 2019. Therefore, the establishment fee for a non-small business for FY 2019 is $15,000 multiplied by 1.092148 plus $1,993, which equals $18,375 (rounded to the nearest dollar).

3. Re-Inspection Fee

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2019 re-inspection fee is equal to $15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2019 is 1.092148. Therefore, the re-inspection fee for FY 2019 is $15,000 multiplied by 1.092148, which equals $16,382 (rounded to the nearest dollar). There is no reduction in this fee for small businesses.

C. Summary of FY 2019 Fee Rates

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee	$5,461
Non-Small Business Establishment Fee	18,375
Re-inspection Fee	16,382

III. Fee Payment Options and Procedures

A. Establishment Fee

Once an entity submits registration information and FDA has determined that the information is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity, via email to the email address indicated in the registration file, or via regular mail if email is not an option. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within 15 calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2018 and wish to maintain their status as an outsourcing facility in FY 2019 must register during the annual registration period that lasts from October 1, 2018, to December 31, 2018. Failure to register and complete payment by December 31, 2018, will result in a loss of status as an outsourcing facility on January 1, 2019. Entities should submit their registration information no later than December 10, 2018, to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

B. Re-Inspection Fee

FDA will issue invoices for each re-inspection after the conclusion of the re-inspection, via email to the email address indicated in the registration file or via regular mail if email is not an option. Invoices must be paid within 30 days.

C. Fee Payment Procedures

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (**Note:** only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, click ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

2. If paying with a paper check: Checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013).

3. When paying by wire transfer, the invoice number must be included. Without the invoice number the payment may not be applied. Regarding re-inspection fees, if the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that the outsourcing facility add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If

[1] To qualify for a small business reduction of the FY 2019 establishment fee, entities had to submit their exception requests by April 30, 2018. See section 744K(c)(4)(B) of the FD&C Act. The time for requesting a small business exception for FY 2019 has now passed. An entity that wishes to request a small business exception for FY 2020 should consult section 744K(c)(4) of the FD&C Act and section III.D of FDA's guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act,'' which can be accessed on FDA's website at *https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm391102.pdf.*

needed, FDA's tax identification number is 53–0196965.

Dated: July 26, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16416 Filed 7–31–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0007]

Prescription Drug User Fee Rates for Fiscal Year 2019

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2019. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Prescription Drug User Fee Amendments of 2017 (PDUFA VI), authorizes FDA to collect application fees for certain applications for the review of human drug and biological products, and prescription drug program fees for certain approved products. This notice establishes the fee rates for FY 2019.

FOR FURTHER INFORMATION CONTACT: Lola Olajide, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14541B, Silver Spring, MD 20993–0002, 240–402–4244.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the FD&C Act (21 U.S.C. 379g and 379h, respectively) establish two different kinds of user fees. Fees are assessed as follows: (1) Application fees are assessed on certain types of applications for the review of human drug and biological products; and (2) prescription drug program fees are assessed on certain approved products (section 736(a) of the FD&C Act). When specific conditions are met, FDA may waive or reduce fees (section 736(d) of the FD&C Act).

For FY 2018 through FY 2022, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA VI. The base revenue amount for FY 2019 is $935,903,507. The FY 2019 base revenue amount is adjusted for inflation and for the resource capacity needs for the process for the review of human drug applications (the capacity planning adjustment). An additional dollar amount specified in the statute (see section 736(b)(1)(F) of the FD&C Act) is then added to provide for additional full-time equivalent (FTE) positions to support PDUFA VI initiatives. The FY 2019 revenue amount may be adjusted further, if necessary, to provide for sufficient operating reserves of carryover user fees. Finally, the amount is adjusted to provide for additional direct costs to fund PDUFA VI initiatives. Fee amounts are to be established each year so that revenues from application fees provide 20 percent of the total revenue, and prescription drug program fees provide 80 percent of the total revenue.

This document provides fee rates for FY 2019 for an application requiring clinical data ($2,588,478), for an application not requiring clinical data ($1,294,239), and for the prescription drug program fee ($309,915). These fees are effective on October 1, 2018, and will remain in effect through September 30, 2019. For applications that are submitted on or after October 1, 2018, the new fee schedule must be used.

II. Fee Revenue Amount for FY 2019

The base revenue amount for FY 2019 is $935,903,507 prior to adjustments for inflation, capacity planning, additional FTE, operating reserve, and additional direct costs (see section 736(b)(1) of the FD&C Act).

A. FY 2018 Statutory Fee Revenue Adjustments for Inflation

PDUFA VI specifies that the $935,903,507 is to be adjusted for inflation increases for FY 2019 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 736(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per FTE positions at FDA for the first 3 of the preceding 4 FYs, multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of human drug applications for the first 3 of the preceding 4 FYs (see section 736(c)(1)(A) and (c)(1)(B) of the FD&C Act).

Table 1 summarizes the actual cost and FTE data for the specified FYs and provides the percent changes from the previous FYs and the average percent changes over the first three of the four FYs preceding FY 2019. The 3-year average is 2.4152 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGES

Fiscal year	2015	2016	2017	3-year average
Total PC&B	$2,232,304,000	$2,414,728,159	$2,581,551,000	
Total FTE	15,484	16,381	17,022	
PC&B per FTE	$144,168	$147,408	$151,660	
Percent Change From Previous Year	2.1136	2.2474	2.8845	2.4152

The statute specifies that this 2.4152 percent be multiplied by the proportion of PC&B costs to the total FDA costs of the process for the review of human drug applications. Table 2 shows the PC&B and the total obligations for the process for the review of human drug applications for the first three of the preceding four FYs.

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

Fiscal year	2015	2016	2017	3-year average
Total PC&B	$615,483,892	$652,508,273	$711,016,627	
Total Costs	$1,127,664,528	$1,157,817,695	$1,206,657,269	
PC&B Percent	54.5804	56.3567	58.9245	56.6205

The payroll adjustment is 2.4152 percent from table 1 multiplied by 56.6205 percent (or 1.3675 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items; annual index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of the process for the review of human drug applications for the first 3 years of the preceding 4 FYs (see section 736(c)(1)(B) of the FD&C Act). Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Baltimore area. The data are published by the Bureau of Labor Statistics and can be found on its website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA311SA0, CUUSA311SA0.*

TABLE 3—ANNUAL AND THREE-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-BALTIMORE AREA

Year	2015	2016	2017	3-year average
Annual CPI	155.353	157.180	159.202	.....
Annual Percent Change	0.3268	1.1760	1.2864	0.9297

The statute specifies that this 0.9297 percent be multiplied by the proportion of all costs other than PC&B to total costs of the process for the review of human drug applications obligated. Since 56.6205 percent was obligated for PC&B (as shown in table 2), 43.3795 percent is the portion of costs other than PC&B (100 percent minus 56.6205 percent equals 43.3795 percent). The non-payroll adjustment is 0.9297 percent times 43.3795 percent, or 0.4033 percent.

Next, we add the payroll adjustment (1.3675 percent) to the non-payroll adjustment (0.4033 percent), for a total inflation adjustment of 1.7708 percent (rounded) for FY 2019.

We then multiply the base revenue amount for FY 2019 ($935,903,507) by 1.017708, yielding an inflation-adjusted amount of $952,476,486.

B. FY 2019 Statutory Fee Revenue Adjustments for Capacity Planning

The statute specifies that after $935,903,507 has been adjusted for inflation, the inflation-adjusted amount shall be further adjusted to reflect changes in the resource capacity needs for the process of human drug application reviews (see section 736(c)(2) of the FD&C Act). The statute prescribes an interim capacity planning adjustment be utilized until a new methodology can be developed through a process involving an independent evaluation as well as obtaining public comment. The interim capacity planning adjustment is applied to FY 2019 fee setting.

To determine the FY 2019 capacity planning adjustment, FDA calculated the average number of each of the five elements specified in the capacity planning adjustment provision: (1) Human drug applications (new drug applications (NDAs)/biologics license applications (BLAs)); (2) active commercial investigational new drug applications (INDs) (IND applications that have at least one submission during the previous 12 months); (3) efficacy supplements; (4) manufacturing supplements; and (5) formal meetings, type A, B, B(EoP), C, and written responses only (WRO) issued in lieu of such formal meetings, over the 3-year period that ended on June 30, 2017, and the average number of each of these elements over the most recent three-year period that ended June 30, 2018.

The calculations are summarized in table 4. The three-year averages for each element are provided in column 1 (''Three-Year Average Ending 2017'') and column 2 (''Three-Year Average Ending 2018''). Column 3 reflects the percent change from column 1 to column 2. Column 4 shows the weighting factor for each element. The weighting factor methodology has been updated for PDUFA VI. The previous methodology relied on the relative value of the standard costs for the elements included in the adjuster, and summed to 100 percent. The weighting factor now is the time invested in activities related to the element expressed as a percentage of total time invested in PDUFA activities, and will adjust only the costs attributed to the elements included in the model (hence the weighting factor does not now sum to 100 percent). Column 5 is the weighted percent change in each element. This is calculated by multiplying the weighting factor in each line in column 4 by the percent change in column 3. The values in column 5 are summed, reflecting an adjustment of 2.9067 percent (rounded).

TABLE 4—CAPACITY PLANNING ADJUSTER (INTERIM METHODOLOGY) CALCULATION FOR FY 2019

Element	Column 1	Column 2	Column 3	Column 4	Column 5
	3-year average ending 2017	3-year average ending 2018	Percent change (column 1 to column 2)	Weighting factor (percent)	Weighted percent change
NDAs/BLAs	153.0000	162.0000	5.8824	20.5015	1.2060
Active Commercial INDs	7,846.6667	8,057.0000	2.6805	22.2771	0.5971
Efficacy Supplements	212.3333	234.3333	10.3611	5.2439	0.5433
Manufacturing Supplements	2,482.6667	2,561.6667	3.1821	3.7243	0.1185
Meetings Scheduled and WROs	2,940.0000	3,136.3333	6.6780	6.6156	0.4418
FY 2019 Capacity Planning Adjuster	.....	.....	.....	.....	2.9067

Table 5 shows the calculation of the inflation and capacity planning adjusted amount for FY 2019. The FY 2019 base revenue amount, $935,903,507, shown on line 1 is multiplied by the inflation adjustment factor of 1.017708, resulting

in the inflation-adjusted amount of $952,476,486 shown on line 3. That amount is then multiplied by one, plus the capacity planning adjustment of 2.9067 percent, resulting in the inflation and capacity planning adjusted amount of $980,162,120 shown on line 5.

TABLE 5—PDUFA INFLATION AND CAPACITY PLANNING ADJUSTED AMOUNT FOR FY 2019, SUMMARY CALCULATION

FY 2019 Revenue Amount	$935,903,507	Line 1.
Inflation Adjustment Factor for FY 2019 (1 plus 1.7708 percent)	1.017708	Line 2.
Inflation Adjusted Amount	952,476,486	Line 3.
Capacity Planning Adjustment Factor for FY 2019 (1 plus 2.9067 percent)	1.029067	Line 4.
Inflation and Capacity Planning Adjusted Amount	980,162,120	Line 5.

The capacity planning adjustment adds $27,685,634 to the fee revenue amount for FY 2019. This increase is driven by the fact that the counts of elements for 2018 (year ending June 30) are at or near the highest levels since the first incorporation of the workload adjuster in 2003. The NDA/BLA count in 2018 is equal to the highest annual number recorded since the advent of the workload adjuster methodology in 2003. Active commercial INDs, efficacy supplements, and meetings/WROs are higher in 2018 than in any previous year recorded in the workload adjuster (note: Meetings/WROs are only counted back to 2014 while the other elements are counted back to 2003). The manufacturing supplement count is approximately 2 percent below the highest number recorded in the history of the workload adjuster. Comparing 2018 to 2015, the first year included in the average in column 1 in the adjustment, NDA/BLAs are 17 percent higher, active commercial INDs are 8 percent higher, efficacy supplements are 36 percent higher, manufacturing supplements are 10 percent higher, and meetings scheduled and WROs are 21 percent higher. This significant and across the board increase in submission activity is the driver of the $27,685,634 upward adjustment to the fee revenue amount.

Per the commitments made in PDUFA VI, this increase in the revenue amount will be allocated and used by organizational review components engaged in direct review work to enhance resources and expand staff capacity and capability (see II.A.4 on p.37 of the PDUFA VI commitment letter [1]).

C. FY 2019 Statutory Fee Revenue Adjustments for Additional Dollar Amounts

PDUFA VI provides an additional dollar amount for each of the five fiscal years covered by PDUFA VI for additional FTE to support PDUFA VI enhancements outlined in the PDUFA VI commitment letter. The amount for FY 2019 is $21,317,472 (see section 736(b)(1)(F) of the FD&C Act). Adding this amount to the inflation and capacity planning adjusted revenue amount, $980,162,120, equals $1,001,479,592.

D. FY 2019 Statutory Fee Revenue Adjustments for Operating Reserve

PDUFA VI provides for an operating reserve adjustment to allow FDA to increase the fee revenue and fees for any given fiscal year during PDUFA VI to maintain up to 14 weeks of operating reserve of carryover user fees. If the carryover balance exceeds 14 weeks of operating reserves, FDA is required to decrease fees to provide for not more than 14 weeks of operating reserves of carryover user fees.

To determine the 14-week operating reserve amount, the FY 2019 annual base revenue adjusted for inflation and capacity planning, $980,162,120, is divided by 52, and then multiplied by 14. The 14-week operating reserve amount for FY 2019 is $263,889,802.

To determine the end of year operating reserve amount, the Agency must assess actual operating reserve at the end of the third quarter of FY 2018, and forecast collections and obligations in the fourth quarter of FY 2018. The estimated end of year FY 2018 operating reserve is $235,128,646.

Because the estimated end of year FY 2019 PDUFA operating reserve does not exceed the 14-week operating reserve for FY 2019, FDA will not reduce the FY 2019 PDUFA fee revenue in FY 2019.

E. FY 2019 Statutory Fee Revenue Adjustments for Additional Direct Cost

PDUFA VI specifies that $8,730,000, adjusted for inflation, be added in addition to the operating reserve adjustment to account for additional direct costs in FY 2019. This additional direct cost adjustment is adjusted for inflation by multiplying $8,730,000 by the Consumer Price Index for urban consumers (Washington-Baltimore, DC-MD-VA-WV; Not Seasonally Adjusted; All Items; Annual Index) for 2017, which is 159.202, and then divided by such Index for 2016, 157.180 (see section 736(c)(4)(B) of the FD&C Act). This results in an adjustment factor of 1.012864, making the additional direct cost adjustment equal to $8,842,303.

The final FY 2019 PDUFA target revenue is $1,010,322,000 (rounded to the nearest thousand dollars).

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate 20 percent of the total target revenue amount, or $202,064,400 in FY 2019.

B. Estimate of the Number of Fee-Paying Applications and Setting the Application Fees

FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive during the next FY by averaging the number of fee-paying FAEs received in the three most recently completed FYs. Prior year FAE totals are updated annually to reflect refunds and waivers processed after the close of the FY.

In estimating the number of fee-paying FAEs, a full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half of an FAE. An application that is withdrawn before filing, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount. Prior to PDUFA VI, the FAE amount also included supplements; supplements have been removed from the FAE calculation as the supplement fee has been discontinued in PDUFA VI.

As table 6 shows, the average number of fee-paying FAEs received annually in the most recent three-year period is 78.063013 FAEs. FDA will set fees for

[1] The PDUFA VI commitment letter can be viewed at *https://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf.*

FY 2019 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 6—FEE-PAYING FAES

FY	2015	2016	2017	3-year average
Fee-Paying FAEs	81.955603	70.483437	81.750000	78.063013

Note: Prior year FAE totals are updated annually to reflect refunds and waivers processed after the close of the FY.

The FY 2019 application fee is estimated by dividing the average number of full applications that paid fees over the latest three years, 78.063013, into the fee revenue amount to be derived from application fees in FY 2019, $202,064,400. The result is a fee of $2,588,478 per full application requiring clinical data, and $1,294,239 per application not requiring clinical data.

IV. Fee Calculations for Prescription Drug Program Fees

PDUFA VI assesses prescription drug program fees for certain prescription drug products; in addition, an applicant will not be assessed more than five program fees for a fiscal year for prescription drug products identified in a single approved NDA or BLA (see section 736(a)(2)(C)). Applicants are assessed a program fee for a fiscal year only for prescription drug products identified in a human drug application approved as of October 1 of such fiscal year.

FDA estimates 2,683 program fees will be invoiced in FY 2019 before factoring in waivers, refunds, and exemptions. FDA approximates that there will be 40 waivers and refunds granted. In addition, FDA approximates that another 35 program fees will be exempted in FY 2019 based on the orphan drug exemption in section 736(k) of the FD&C Act. FDA estimates 2,608 program fees in FY 2019, after allowing for an estimated 75 waivers and reductions, including the orphan drug exemptions. The FY 2019 prescription drug program fee rate is calculated by dividing the adjusted total revenue from program fees ($808,257,600) by the estimated 2,608 program fees, for a FY 2019 program fee of $309,915.

V. Fee Schedule for FY 2019

The fee rates for FY 2019 are displayed in table 7:

TABLE 7—FEE SCHEDULE FOR FY 2019

Fee category	Fee rates for FY 2019
Application:	
Requiring clinical data	$2,588,478
Not requiring clinical data	1,294,239
Program:	309,915

VI. Fee Payment Options and Procedures

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application subject to fees under PDUFA that is received on or after October 1, 2018. Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (Note: Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov,* a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the Prescription Drug User Fee Cover Sheet and generating the user fee ID number.

Please include the user fee (ID) number on your check, bank draft, or postal money order. Mail your payment to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000. If a check, bank draft, or money order is to be sent by a courier that requests a street address, the courier should deliver your payment to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and add it to your payment to ensure that your fee is fully paid. The account information for wire transfers is as follows: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

B. Prescription Drug Program Fees

FDA will issue invoices and payment instructions for FY 2019 program fees under the new fee schedule in August 2018. Payment will be due on October 1, 2018. FDA will issue invoices in December 2018 for FY 2019 program fees that qualify for fee assessments after the August 2018 billing.

Dated: July 26, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16387 Filed 7–31–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226.

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS, 66215–2802, 800–445–6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr.,

Spokane, WA 99204, 509–755–8991/ 800–541–7891x7.

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, WA 98421, 800–442–0438.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles P. LoDico,

Chemist.

[FR Doc. 2018–16440 Filed 7–31–18; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 18–08]

COBRA Fees To Be Adjusted for Inflation in Fiscal Year 2019

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is adjusting certain customs user fees and limitations established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) for Fiscal Year 2019 in accordance with the Fixing America's Surface Transportation Act (FAST Act) as implemented by CBP regulations.

DATES: The adjusted amounts of customs COBRA user fees and their corresponding limitations set forth in this notice for Fiscal Year 2019 are required as of October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Tina Ghiladi, Director—Office of Finance, 202–344–3722, *UserFeeNotices@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114–94) was signed into law. Section 32201 of the FAST Act amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring certain customs COBRA user fees and corresponding limitations to be adjusted by the Secretary of the Treasury (Secretary) to reflect certain increases in inflation.

Sections 24.22 and 24.23 of title 19 of the Code of Federal Regulations (19 CFR 24.22 and 24.23) describe the procedures that implement the requirements of the FAST Act. Specifically, paragraph (k) in section 24.22 (19 CFR 24.22(k)) sets forth the methodology to determine the change in inflation as well as the factor by which the fees and limitations will be adjusted, if necessary. The fees and limitations subject to adjustment, which are set forth in Appendix A and Appendix B of part 24, include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft and vessel passenger arrival fees, dutiable mail fees, customs broker permit user fees, barges and other bulk carriers arrival fees, and merchandise processing fees, as well as the corresponding limitations.

Determination of Whether an Adjustment Is Necessary for Fiscal Year 2019

In accordance with 19 CFR 24.22, CBP must determine annually whether the fees and limitations must be adjusted to reflect inflation. For fiscal year 2019, CBP is making this determination by comparing the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI–U) for the current year (June 2017–May 2018) with the average of the CPI–U for the comparison year (June 2016-May 2017) to determine the change in inflation, if any. If there is an increase in the CPI of greater than one (1) percent, CBP must adjust the customs COBRA user fees and corresponding limitations using the methodology set forth in 19 CFR 24.22(k). (19 CFR 24.22(k)). Following the steps provided in paragraph (k)(2) of section 24.22, CBP has determined that the increase in the CPI between the most recent June to May 12-month period (June 2017–May 2018) and the comparison year (June 2016-May 2017) is 2.063 [1] percent. As the increase in the CPI is greater than one (1) percent, the customs COBRA user fees and corresponding limitations must be adjusted for Fiscal Year 2019.

Determination of the Adjusted Fees and Limitations

Using the methodology set forth in section 24.22(k)(2) of the CBP regulations (19 CFR 24.22(k)), CBP has determined that the factor by which the base fees and limitations will be adjusted is 4.866 percent (base fees and limitations can be found in Appendix A and B to part 24 of title 19). In reaching this determination, CBP calculated the values for each variable found in paragraph (k) of 19 CFR 24.22 as follows:

- The arithmetic average of the CPI–U for June 2017–May 2018, referred to as (A) in the CBP regulations, is 247.540;
- The arithmetic average of the CPI–U for Fiscal Year 2014, referred to as (B), is 236.009;
- The arithmetic average of the CPI–U for the comparison year, referred to as (C), is 242.328;
- The difference between the arithmetic averages of the CPI–U of the

[1] The figures provided in this notice may be rounded for publication purposes only. The calculations for the adjusted fees and limitations were made using unrounded figures, unless otherwise noted.

comparison year (June 2016–May 2017) and the current year (June 2017–May 2018), referred to as (D), is 5.212;

- This difference rounded to the nearest whole number, referred to as (E), is 5;
- The percentage change in the arithmetic averages of the CPI–U of the comparison year (June 2016–May 2017) and the current year (June 2017–May 2018), referred to as (F), is 2.063 percent;
- The difference in the arithmetic average of the CPI–U between the current year (June 2017–May 2018) and the base year (Fiscal Year 2014), referred to as (G), is 11.532; and
- Lastly, the percentage change in the CPI–U from the base year (Fiscal Year 2014) to the current year (June 2017–May 2018), referred to as (H), is 4.886 percent.

Announcement of New Fees and Limitations

The adjusted amounts of customs COBRA user fees and their corresponding limitations for Fiscal Year 2019 as adjusted by 4.886 percent set forth below are required as of October 1, 2018. Table 1 provides the fees and limitations found in 19 CFR 24.22 as adjusted for Fiscal Year 2019 and Table 2 provides the fees and limitations found in 19 CFR 24.23 as adjusted for Fiscal Year 2019.

TABLE 1—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.22 AS ADJUSTED FOR FISCAL YEAR 2019

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/limitation	New fee/ limitation adjusted in accordance with the FAST Act
(a)(1)	(b)(1)(i)	Fee: Commercial Vessel Arrival Fee	$458.35
(b)(5)(A)	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees	6,245.97
(a)(8)	(b)(2)(i)	Fee: Barges and Other Bulk Carriers Arrival Fee	115.37
(b)(6)	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees	1,573.29
(a)(2)	(c)(1)	Fee: Commercial Truck Arrival Fee [2]	[3] 5.75
(b)(2)	(c)(2) and (3)	Limitation: Commercial Truck Calendar Year Prepayment Fee [4]	104.89
(a)(3)	(d)(1)	Fee: Railroad Car Arrival Fee	8.65
(b)(3)	(d)(2) and (3)	Limitation: Railroad Car Calendar Year Prepayment Fee	104.89
(a)(4)	(e)(1) and (2)	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee.	28.84
(a)(6)	(f)	Fee: Dutiable Mail Fee	5.77
(a)(5)(A)	(g)(1)(i)	Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee	5.77
(a)(5)(B)	(g)(1)(ii)	Fee: Commercial Vessel Passenger Arrival Fee (from one of the territories and possessions of the United States).	2.02
(a)(7)	(h)	Fee: Customs Broker Permit User Fee	144.74

TABLE 2—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.23 AS ADJUSTED FOR FISCAL YEAR 2019

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/limitation	New fee/ limitation adjusted in accordance with the FAST Act
(b)(9)(A) (ii)	(b)(1)(i)(A)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	$1.05
(b)(9)(B)(i)	(b)(1)(i)(B)(2)	Limitation: Minimum Express Consignment Carrier/Centralized Hub Facility Fee [5]	0.37
(b)(9)(B)(i)	(b)(1)(i)(B)(2)	Limitation: Maximum Express Consignment Carrier/Centralized Hub Facility Fee	1.05
(a)(9)(B)(i); (b)(8)(A)(i).	(b)(1)(i)(B)(1)	Limitation: Minimum Merchandise Processing Fee [6]	26.22
(a)(9)(B)(i); (b)(8)(A)(i).	(b)(1)(i)(B)(1)	Limitation: Maximum Merchandise Processing Fee [7] [8]	508.70
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3.15
(a)(10)(C)(i)	(b)(2)(i)	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel	2.10
(a)(10)(C)(ii)	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel	6.29
(a)(10)(C)(iii)	(b)(2)(iii)	Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel	9.44
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1.05

[2] The Commercial Truck Arrival fee is the CBP fee only, it does not include the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Services agricultural quarantine and inspection (APHIS/AQI) fee that is collected by CBP on behalf of USDA. *See* 7 CFR 354.3(c) and 19 CFR 24.22(c)(1). Once 19 Single Crossing Fees have been paid and used for a vehicle identification number (VIN)/vehicle in a Decal and Transponder Online Procurement System (DTOPS) account within a calendar year, the payment required for the 20th (and subsequent) single-crossing is only the APHIS/AQI fee and no longer includes the CBP Commercial Truck Arrival fee (for the remainder of that calendar year).

[3] The Commercial Truck Arrival fee is adjusted down from 5.77 to the nearest lower nickel. *See* 82 FR 50523 (November 1, 2017).

[4] *See* footnote 2 above.

[5] Although the minimum limitation is published, the fee charged is the fee required by 19 U.S.C. 58c(b)(9)(A)(ii).

[6] Only the limitation is increasing; the ad valorem rate of 0.3464% remains the same. *See* 82 FR 32661 (July 17, 2017).

[7] *Id.*

[8] For monthly pipeline entries, see: *https://www.cbp.gov/trade/entry-summary/pipeline-monthly-entry-processing/pipeline-line-qa.*

Tables 1 and 2 setting forth the adjusted fees and limitations for Fiscal Year 2019 will also be maintained for the public's convenience on the CBP website at *www.cbp.gov.*

Dated: July 27, 2018.

Kevin K. McAleenan,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2018–16510 Filed 7–31–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID DHS–2018–0033]

The President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Department of Homeland Security (DHS) is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting is open to the public.

DATES: The NSTAC will meet on Wednesday, August 15, 2018, from 1:00 p.m. to 2:00 p.m. Eastern Time (ET). Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to participate, please email *NSTAC@hq.dhs.gov* by 5:00 p.m. ET on Friday, August 10, 2018.

Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that participants may discuss during the meeting will be available at *www.dhs.gov/nstac* for review as of Wednesday, August 1, 2018. Comments may be submitted at any time and must be identified by docket number DHS–2018–0033. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the docket number DHS–2018–0033 in the subject line of the email.
- *Fax:* (703) 705–6190, ATTN: Sandy Benevides.
- *Mail:* Helen Jackson, Designated Federal Official, Stakeholder Engagement and Cyber Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0612, Arlington, VA 20598–0612.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number DHS–2018–0033. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number DHS–2018–0033.

A public comment period will be held during the teleconference on August 15, 2018, from 1:40 p.m.–1:55 p.m. ET. Speakers who wish to participate in the public comment period must register in advance by no later than Friday, August 10, 2018, at 5:00 p.m. ET by emailing *NSTAC@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, NSTAC Designated Federal Official, Department of Homeland Security, (703) 705–6276 (telephone) or *helen.jackson@hq.dhs.gov* (email).

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on Wednesday, August 15, 2018, to discuss a potential new study topic regarding advancing resiliency and fostering innovation in the information and communications technology ecosystem. Additionally, the NSTAC will receive an update on the committee's progress on its current Cybersecurity Moonshot study. The goal of this study is to examine and expedite progress against the Nation's critical cybersecurity challenges. The committee has examined various approaches to a Moonshot and is developing recommendations that steer the Administration towards a shared, strategic vision and an ambitious, outcome-focused cybersecurity end goal.

Dated: July 26, 2018.

Helen Jackson,

Designated Federal Official for the NSTAC.

[FR Doc. 2018–16395 Filed 7–31–18; 8:45 am]

BILLING CODE 9110–09–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP02000.12X.L54100000.FR0000. LVCLA12A5180.241A; AZA–35886]

Notice of Realty Action: Application for Conveyance of Federally Owned Mineral Interests in Pima County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is processing an application under the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, to convey the federally owned mineral interests in 591.21 acres of land located in Pima County, Arizona, to the surface owner, Waste Management of Arizona, Inc. Publication of this notice temporarily segregates the federally owned mineral interests in the land covered by the application from all forms of appropriation under the public land laws, including the mining laws, for up to 2 years while the BLM processes the application.

DATES: Submit written comments to the BLM on or before September 17, 2018.

ADDRESSES: Submit written comments to the BLM Phoenix District Office, Attn: Benedict Parsons, Realty Specialist, 21605 North 7th Ave., Phoenix, AZ 85027.

FOR FURTHER INFORMATION CONTACT: Benedict Parsons, Realty Specialist, by telephone: 623–580–5637, or by email at *bparson@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS service is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is processing an application under section 209 of FLPMA, 43 U.S.C. 1719(b), to convey the federally owned mineral interests that aggregate 591.21 acres, situated in Pima County, Arizona. The location of the federally owned

mineral interest for conveyance is identical in location as the privately owned surface interest of the applicant, and is described as follows:

Gila and Salt River Meridian, Arizona

T. 12 S, R. 10 E, Section 1
Lots 1–3, S½NE¼, S½NW¼, SW¼, SE¼
The areas described aggregate 591.21 acres.

Section 209(b) of FLPMA authorizes the conveyance of the federally owned mineral interests in land to the current or prospective surface owner, upon payment of administrative costs and the fair market value of the interest being conveyed. The objective of Section 209 is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) Where continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development. The applicant has deposited sufficient funding to cover administrative costs, but not limited to, the cost for the mineral potential report.

Subject to valid existing rights, on August 1, 2018 the federally owned mineral interests in the land described above are hereby segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon: (1) Issuance of a patent or other document of conveyance as to such mineral interests; (2) Final rejection of the application; or (3) August 3, 2020, whichever occurs first.

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 available to the public at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2720.1–1(b)

Melissa Warren,

Tucson Field Manager.

[FR Doc. 2018–16385 Filed 7–31–18; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC02000 L57000000.BX0000; 241A; MO#4500119602]

Notice of Temporary Closures of Public Land in Washoe County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976, certain public land near Stead, Nevada, will be temporarily closed to all public use to provide for public safety during the 2018 Reno Air Racing Association Racing Seminar and the Reno National Championship Air Races.

DATES: The temporary closure period is September 8 through September 16, 2018.

FOR FURTHER INFORMATION CONTACT: Bryant Smith, telephone: 775–885–6000, email: *b6smith@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This temporary closure applies to all public use, including pedestrian use and vehicles. The public lands affected by this temporary closure are described as follows:

Mount Diablo Meridian, Nevada

T. 21 N, R. 19 E,
Sec. 8, E½NE¼, NW¼NE¼, and E½SE¼;
Sec. 16, SW¼SW¼NE¼, NW¼, and W½SE¼.
The areas described aggregate 450 acres in Washoe County, Nevada.

The temporary closure notice and map of the closure area will be posted at the BLM Nevada State Office, 1340 Financial Boulevard, Nevada and on the BLM website: *https://www.blm.gov.* BLM law enforcement, in coordination with the Washoe County Sheriff's Office, will provide notification to the public of the temporary closure during the scheduled events. Under the authority of Section 303(a) of the FLPMA, 43 CFR 8360.0–7 and 43 CFR 8364.1, the Bureau of Land Management will enforce the following rules in the area described above. All public use, whether motorized, on foot, or otherwise, is prohibited.

Exceptions: The temporary closure restrictions do not apply to event officials, medical and rescue personnel, law enforcement, and agency personnel monitoring the events.

Penalties: Any person who violates this temporary closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

Authority: 43 CFR 8360.0–7 and 8364.1.

Paul Fuselier,

Acting Field Manager, Sierra Front Field Office.

[FR Doc. 2018–16384 Filed 7–31–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO–923000.L1440000.ET0000; COC 028647]

Public Land Order No. 7871; Partial Withdrawal Revocation, Power Site Classification No. 361 and Modification of Public Land Order No. 7448; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order partially revokes a withdrawal created by Secretarial Order dated October 24, 1944, which established Power Site Classification (PSC) No. 361 insofar as it affects 41.42 acres, and modifies Public Land Order No. 7448 by releasing from the effect of the provisions of Section 24 of the Federal Power Act, approximately 81.88 (formerly 80) acres of National Forest System (NFS) lands. This Order opens the lands to such uses as may be made of NFS lands subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

DATES: This Public Land Order (PLO) is effective on August 1, 2018.

FOR FURTHER INFORMATION CONTACT: John D. Beck, Bureau of Land Management, Colorado State Office, (303) 239–3882; or write: Branch of Lands and Realty, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual. The FRS is available 24 hours a day, 7 days a week to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The United States Forest Service (USFS) requested a partial revocation for PSC No. 361 created by a Secretarial Order dated October 24, 1944, which classified NFS lands for potential waterpower site

development. The USFS also requests PLO No. 7448 be modified by removing the Federal Power Act Section 24 reservation provision noted in paragraph 1 of the Order. The Bureau of Land Management, in consultation with the Federal Energy Regulatory Commission, determined that the interests of the United States will not be injured by conveyance of the land out of Federal ownership. This Order opens some lands within PSC No. 361 to such uses as may be made of NFS lands.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and pursuant to the Federal Energy Regulatory Commission (FERC) Determination No. DV17–3–000, it is ordered as follows:

1. The withdrawal created by Secretarial Order dated October 24, 1944, which established PSC No. 361, is hereby revoked insofar as it affects the following described lands:

6th Principal Meridian, Colorado

T. 6 N, R. 71 W,
Sec. 31, lot 11, (formerly being the NE¼SE¼);
Sec. 32, lots 1, 2, and 3, (formerly being the NW¼SW¼).

The area described aggregates 41.42 acres in Larimer County.

2. PLO No. 7448 (65 FR 35391) is modified by removing from paragraph 1 of the Order the limitation ''subject to provisions of Section 24 of the Federal Power Act as specified by the FERC determination DV17–3–000,'' affecting the following described lands:

6th Principal Meridian, Colorado

T. 6 N, R. 71 W,
Sec. 31, lots 5, 6, 9, and 10, (formerly being the SW¼NE¼, SE¼NW¼).

The area described contains 81.88 (formerly 80) acres in Larimer County.

3. At 9 a.m. on August 1, 2018 the lands described in Paragraph 1 and 2 are opened to such forms of disposition as may be made of NFS land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Joseph R. Balash,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2018–16451 Filed 7–31–18; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04073000, XXXR4081X3, RX.05940913.7000000]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

DATES: The meeting will be held on Wednesday, August 22, 2018, from 9:30 a.m. to approximately 5:00 p.m., and Thursday, August 23, 2018, from 8:30 a.m. to approximately 3:00 p.m.

ADDRESSES: The meeting will be held at the Little America Hotel, 2515 E Butler Avenue, Flagstaff, Arizona 86004.

FOR FURTHER INFORMATION CONTACT: Kathleen Callister, Bureau of Reclamation, telephone (801) 524–3781; email at *kcallister@usbr.gov;* facsimile (801) 524–5499.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) Current basin hydrology and water year 2019 operations; (2) non-native fish issues; (3) joint tribal liaison report; and (4) science results from Grand Canyon Monitoring and Research Center staff. The AMWG will also discuss the FY 2019 Budget and Work Plan and other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/rm/amp/amwg/mtgs/18aug22.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public and seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive call-in information or a link to the live stream webcast should contact Kathleen Callister, Bureau of Reclamation, Upper Colorado Regional Office, by email at *kcallister@usbr.gov,* or by telephone at (801) 524–3781, to register no later than five (5) business days prior to the meeting. Individuals requiring special accommodations to access the public meeting should contact Ms. Callister at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Kathleen Callister, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 8100, Salt Lake City, Utah 84138; email at *kcallister@usbr.gov;* or facsimile (801) 524–5499, at least five (5) business days prior to the meeting. Any written comments received will be provided to the AMWG members.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 11, 2018.

Kathleen Callister,

Manager, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 2018–16481 Filed 7–31–18; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1109]

Certain Clidinium Bromide and Products Containing Same; Commission Decision Not To Review an Initial Determination Granting Complainants' Unopposed Motion To Terminate the Investigation Based on the Withdrawal of the Amended Complaint; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 12) of the presiding Administrative Law Judge (''ALJ'') granting Complainants' unopposed motion to terminate the investigation in its entirety based on the withdrawal of the amended complaint. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 23, 2018, based on a complaint filed by Valeant Pharmaceuticals North America LLC of Bridgewater, New Jersey and Valeant Pharmaceuticals International, Inc. of Laval, Canada (collectively, ''Valeant''). *See* 83 FR 17676–7 (Apr. 23, 2018). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain clidinium bromide and products containing same by reason of unfair acts or methods of competition, the threat or effect of which is to destroy or substantially injure an industry in the United States. *See id.* The notice of investigation named as respondents in this investigation: Bi-Coastal Pharma International LLC and Bi-Coastal Pharmaceutical Corporation (collectively, ''Bi-Coastal'') of Shrewsbury, New Jersey; ECI Pharmaceuticals LLC of Fort Lauderdale, Florida; Virtus Pharmaceuticals LLC of Tampa, Florida; and Virtus Pharmaceuticals OPCO II LLC of Nashville, Tennessee. *See id.* The Office of Unfair Import Investigations is also a party to this investigation. *See id.* On June 12, 2018, the ALJ partially terminated the investigation as to Bi-Coastal based on a settlement agreement. *See* Order No. 9 (June 12, 2018), *unreviewed,* Comm'n Notice (June 28, 2018).

On July 9, 2018, Valeant filed an unopposed motion (*Motion*) to terminate the investigation in its entirety based on the withdrawal of the amended complaint. On July 10, 2018, the ALJ issued the subject ID (Order No. 12) granting the *Motion.* In accordance with Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1), the ID notes that ''[t]here are no agreements, written or oral, express or implied between Complainants and Respondents concerning the subject matter of this Investigation.'' *See* ID at 1 (citing *Motion* at 2). In addition, the ID finds that ''there are no extraordinary circumstances that warrant denying the motion.'' *See id.*

No petition for review of the ID was filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 27, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–16484 Filed 7–31–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1126]

Certain Water Filters and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 8, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Electrolux Home Products, Inc. of Charlotte, North Carolina and KX Technologies, LLC of West Haven, Connecticut. An amended complaint was filed on June 28, 2018. A letter supplementing the amended complaint was filed on July 10, 2018. The amended complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain water filters and components thereof by reason of infringement of U.S. Patent No. 8,673,146 (''the '146 patent''); U.S. Patent No. 8,137,551 (''the '551 patent''); U.S. Patent No. 9,233,322 (''the '322 patent''); and U.S. Patent No. 9,901,852 (''the '852 patent''). The amended complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order or, in the alternative, a limited exclusion order, and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for

this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of investigation: Having considered the amended complaint, the U.S. International Trade Commission, on July 26, 2018, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 6, 7, and 15 of the '146 patent; claim 49 of the '551 patent; claims 1–3, 7–9, and 12–15 of the '322 patent; and claims 1, 4–6, 9–11, 14–18, and 21–31 of the '852 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''water filter cartridges for refrigerators, including water filter cartridge assemblies and interconnection subassemblies'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Electrolux Home Products, Inc., 10200 David Taylor Drive, Charlotte, NC 28262

KX Technologies, LLC, 55 Railroad Avenue, West Haven, CT 06516

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Shenzen Calux Purification Technology Co., Limited, No. 7–3, The Second Industrial Zone, Fudigang Pingdong Community, Pingdi Street, Longgang District, Shenzen, Guangdong, China 518100

Ningbo Pureza Limited, No. l Floor, Shanshan Industrial Park, Jishigang, Yinzhou, Ningbo, China 315100

JiangSu Angkua Environmental Technical Co., Ltd., Chai Wan Industrial Park, RuGao, China 226500

Ecopure Filter Co., Ltd., 266 Yanquing Arterial Highway, Jimo, Qindao, China 266000

Shenzhen Dakon Purification Tech Co., Ltd., 101, No. 7–3, Fudigang Second Industrial Area, Pingdong Community, Pingdi Sreet, Longgng Dist., Shenzhen, Guangdong, China 518100

HongKong Ecoaqua Co., Limited, Hong Kong Rm 2105 JQD2732 Trend Centre, 29–31 Cheng Lee St., Wan Chai, Hong Kong, CHINA, Area Code 852

Ecolife Technologies, Inc., 17910 Ajax Circle, City of Industry, CA 91748

Crystala Filters LLC, 555 Preakness Avenue, Suite 301, Patterson, NJ 07502

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 27, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–16434 Filed 7–31–18; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[USITC SE–18–035]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 3, 2018 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.

2. Minutes.

3. Ratification List.

4. Vote on Inv. Nos. 701–TA–608 and 731–TA–1420 (Preliminary) (Steel Racks from China). The Commission is currently scheduled to complete and file its determinations on August 6, 2018; views of the Commission are currently scheduled to be completed and filed on August 13, 2018.

5. Vote on Inv. Nos. 701–TA–583 and 731–TA–1381 (Final) (Cast Iron Soil Pipe Fittings from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission by August 20, 2018.

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 27, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–16552 Filed 7–30–18; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1105]

Certain Programmable Logic Controller (PLCs), Components Thereof, and Products Containing Same; Commission Determination Not To Review an Initial Determination Granting a Motion of Non-Party North Coast To Intervene

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 10) granting a motion of non-party North Coast Electric Company (''North Coast'') to intervene in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 29, 2018, based on a complaint filed by Radwell International, Inc., of Willingboro, New Jersey (''Radwell''). 83 FR 13515–16 (Mar. 29, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 programmable logic controllers (PLCs), components thereof, and products containing same by reason of: (l) A conspiracy to fix resale prices in violation of Section l of the Sherman Act; (2) a conspiracy to boycott resellers in violation of Section 1 of the Sherman Act; and (3) monopolization in violation of Section 2 of the Sherman Act, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States, or to restrain or monopolize trade and commerce in the United States. *Id.* The notice of investigation names Rockwell Automation, Inc. of Milwaukee, Wisconsin as respondent. *Id.* The Office of Unfair Import Investigations was also named as a party to the investigation. *Id.*

On May 25, 2018, Radwell filed a motion requesting the ALJ to certify to the Commission a request for judicial enforcement of a subpoena *duces tecum* directed to non-party North Coast. On June 8, 2018, pursuant to Commission rules 210.15 and 210.19 (19 CFR 210.15, 210.19), North Coast filed an unopposed motion to intervene for the limited purpose of submitting an opposition to the pending motion to certify, along with the opposition. No party filed a response concerning the motion to intervene.

On July 9, 2018, the ALJ issued the subject ID, granting North Coast's motion to intervene. The ALJ found that North Coast's interests are directly at issue in the investigation and that no party would suffer prejudice as a result of North Coast's intervention for the limited purpose of opposing the motion to certify. No petitions for review were filed.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 27, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–16483 Filed 7–31–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1098]

Certain Subsea Telecommunication Systems and Components Thereof; Commission Determination Not To Review an Initial Determination Granting a Motion for Leave To Amend the Complaint and Notice of Investigation To Reflect a Corporate Name Change

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 21) of the presiding administrative law judge (''ALJ''), granting complainant's unopposed motion for leave to amend the complaint and notice of investigation to reflect the corporate name change of complainant Neptune Subsea Acquisitions Ltd. to Xtera Topco Ltd.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 26, 2018, based on a complaint, as supplemented, filed on behalf of Neptune Subsea Acquisitions Ltd. of the United Kingdom; Neptune Subsea IP Ltd. of the United Kingdom; and Xtera, Inc. of Allen, Texas (''complainants''). 83 FR 3370 (Jan. 26, 2018). The complaint, as supplemented, alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States,

the sale for importation, and the sale within the United States after importation of certain subsea telecommunication systems and components thereof by reason of infringement of one or more claims of U.S. Patent No. 8,380,068; U.S. Patent No. 7,860,403; U.S. Patent No. 8,971,171; U.S. Patent No. 8,351,798; and U.S. Patent No. 8,406,637. The complaint further alleges that an industry in the United States exists as required by section 337. The Notice of Investigation named Nokia Corporation of Espoo, Finland; Nokia Solutions and Networks B.V. of Hoofddorp, The Netherlands; Nokia Solutions and Networks Oy of Espoo, Finland; Alcatel-Lucent Submarine Networks SAS of Boulogne-Billancourt, France; Nokia Solutions and Networks US LLC of Phoenix, Arizona; NEC Corporation of Tokyo, Japan; NEC Networks & System Integration Corporation of Tokyo, Japan; and NEC Corporation of America of Irving, Texas as respondents. The Office of Unfair Import Investigations was named as a party in this investigation.

On May 30, 2018, the complainants filed an unopposed motion for leave to amend the complaint and notice of investigation to reflect a corporate name change of one of the complainants from Neptune Subsea Acquisitions Ltd. to Xtera Topco Ltd.

On July 10, 2018, the ALJ issued the subject ID, granting complainants' unopposed motion. The ALJ found that good cause exists to amend the complaint and notice of investigation and that there was no evidence that the proposed amendment would harm the public interest or prejudice to the parties in the investigation. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 27, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–16485 Filed 7–31–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–365–366 and 731–TA–734–735 (Fourth Review)]

Certain Pasta From Italy and Turkey; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 1, 2018. To be assured of consideration, the deadline for responses is August 31, 2018. Comments on the adequacy of responses may be filed with the Commission by October 16, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Background.*—On July 24, 1996, the Department of Commerce issued countervailing and antidumping duty orders on imports of certain pasta from Italy and Turkey (61 FR 38544). Following first five-year reviews by Commerce and the Commission, effective November 16, 2001, Commerce issued a continuation of the countervailing and antidumping duty orders on imports of certain pasta from Italy and Turkey (66 FR 57703). Following second five-year reviews by Commerce and the Commission, effective October 12, 2007, Commerce issued a continuation of the countervailing and antidumping duty orders on certain pasta from Italy and Turkey (72 FR 58052). Following third five-year reviews by Commerce and the Commission, effective September 17, 2013, Commerce issued a continuation of the countervailing and antidumping duty orders on certain pasta from Italy and Turkey (78 FR 57129). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Italy and Turkey.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original and subsequent five-year review determinations, the Commission defined the *Domestic Like Product* as all dry pasta. One Commissioner defined the *Domestic Like Product* differently in the original and expedited first five-year review determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and subsequent five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of dry pasta. One Commissioner defined the *Domestic Industry* differently in the original and expedited first five-year review determinations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 31, 2018. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 16, 2018. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 18–5–411, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose

members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2012.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2017, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2012, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (*Optional*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree

with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 27, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–16435 Filed 7–31–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0101]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Firearms Act Division and Firearms and Explosives Services Division Customer Service Survey

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. A minor change is being made to the proposed collection OMB 1140–0101 (Firearms and Explosives Services Division (FESD) Customer Service Survey), to include references to the recently established National Firearms Act Division (NFA Division); which was previously a branch in FESD. All survey questions directly relate to customer experience in FESD, NFA Division and their branches. The proposed collection is being published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register**, on May 30, 2018, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 31, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Erica Payne, National Firearms Act Division, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Erica.payne@atf.gov* or by telephone at 304–616–4582. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with change, of a currently approved collection.

(2) *The Title of the Form/Collection:* National Firearms Act Division and Firearms and Explosives Services Division Customer Service Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or Households, Federal Government, and State, Local, or Tribal Government.

Abstract: The purpose of this survey is to gather information about customer service provided to the firearms and explosives industry and government agencies, in order to improve service delivery and customer satisfaction.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 18,200 respondents will utilize this survey, and it will take each respondent approximately 5 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,517 hours which is equal to: 18,200 (total # of responses) * .0833333 (5 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Date: July 27, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–16487 Filed 7–31–18; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Chemtos, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 1, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration

(DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been delegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on June 11, 2018, Chemtos, LLC, 14101 West Highway 290, Building 2000B, Austin, Texas 78737 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3–FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4–FMC)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4–MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR–18 (Also known as RCS–8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB–FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR–144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB–FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB–FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
AB–PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ–2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone	7024	I
AB–CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide	7031	I
MAB–CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F–AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F–ADB; 5F–MDMB–PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB–PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
MDMB–CHMICA, MMB–CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7042	I
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide	7048	I
5F–APINACA, 5F–AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH–081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
SR–19 (Also known as RCS–4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole	7104	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR–144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH–073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
PB–22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F–PB–22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP–47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7)	7348	I
Marihuana Extract	7350	I
Marihuana	7360	I
Parahexyl	7374	I
Mescaline	7381	I
2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C–T–2)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I

Controlled substance	Drug code	Schedule
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N–N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-Methyl-alphapyrrolidinopropiophenone (4-MePPP)	7498	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C–D)	7508	I
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C–E)	7509	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C–H)	7517	I
2-(4-iodo-2,5-dimethoxyphenyl) ethanamine (2C–I)	7518	I
2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C–C)	7519	I
2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C–N)	7521	I
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C–P)	7524	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C–T–4)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B–NBOMe)	7536	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C–NBOMe)	7537	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I–NBOMe)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
alpha-pyrrolidinopentiophenone (α-PVP)	7545	I
alpha-pyrrolidinobutiophenone (α-PBP)	7546	I
AM–694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Cyprenorphine	9054	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphinol	9301	I
Methyldesorphine	9302	I
Methyldihydromorphine	9304	I
Morphine methylbromide	9305	I
Morphine methylsulfonate	9306	I
Morphine-N-oxide	9307	I
Myrophine	9308	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Pholcodine	9314	I
Thebacon	9315	I
Acetorphine	9319	I
Drotebanol	9335	I
U–47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH–7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I

Controlled substance	Drug code	Schedule
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betacetylmethadol	9607	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Clonitazene	9612	I
Dextromoramide	9613	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimenoxadol	9617	I
Dimepheptanol	9618	I
Dimethylthiambutene	9619	I
Dioxaphetyl butyrate	9621	I
Dipipanone	9622	I
Ethylmethylthiambutene	9623	I
Etonitazene	9624	I
Etoxeridine	9625	I
Furethidine	9626	I
Hydroxypethidine	9627	I
Ketobemidone	9628	I
Levomoramide	9629	I
Levophenacylmorphan	9631	I
Morpheridine	9632	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Norpipanone	9636	I
Phenadoxone	9637	I
Phenampromide	9638	I
Phenoperidine	9641	I
Piritramide	9642	I
Proheptazine	9643	I
Properidine	9644	I
Racemoramide	9645	I
Trimeperidine	9646	I
Phenomorphan	9647	I
Propiram	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Tilidine	9750	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II

Controlled substance	Drug code	Schedule
Cocaine	9041	II
Codeine	9050	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Methadone	9250	II
Methadone intermediate	9254	II
Metopon	9260	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Thebaine	9333	II
Dihydroetorphine	9334	II
Levo-alphacetylmethadol	9648	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Phenazocine	9715	II
Thiafentanil	9729	II
Piminodine	9730	II
Racemethorphan	9732	II
Racemorphan	9733	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Bezitramide	9800	II
Fentanyl	9801	II
Moramide-intermediate	9802	II

The company plans to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers.

Dated: July 23, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–16468 Filed 7–31–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Cody Laboratories Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before August 31, 2018. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before August 31, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and request for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 20, 2018, Cody Laboratories, Inc., Steve Hartman, 601 Yellowstone Avenue, Cody, Wyoming 82414–9221 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Phenylacetone	8501	II
Poppy Straw Concentrate.	9670	II
Tapentadol	9780	II

The company plans to import narcotic raw materials to manufacture bulk controlled substances for distribution to its customers. The company plans to import an intermediate form of tapentadol (9780), to bulk manufacture tapentadol for distribution to its customers.

Dated: July 23, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–16467 Filed 7–31–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Galephar Pharmaceutical Research Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 31, 2018. Such persons may also file a written request for a hearing on the application on or before August 31, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been delegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on July 3, 2018, Galephar Pharmaceutical Research Inc., #100 Carr 198 Industrial Park, Juncos, Puerto Rico 00777 applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Hydromorphone	9150	II

The company plans to import the listed controlled substance in finished dosage form for clinical trials, research and analytical purposes.

Dated: July 23, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–16466 Filed 7–31–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Ultra Scientific Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 31, 2018. Such persons may also file a written request for a hearing on the application on or before August 31, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on April 4, 2018, Ultra Scientific Inc., 250 Smith Street, North Kingstown, Rhode Island 02852 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to import derivatives of the listed controlled substances for use as chemical standards for testing and calibration only of analytical equipment. The above controlled substances will not be imported for human or animal consumption.

Dated: July 23, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–16465 Filed 7–31–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Anderson Brecon, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the

issuance of the proposed registration on or before August 31, 2018. Such persons may also file a written request for a hearing on the application on or before August 31, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on February 6, 2018, Anderson Brecon, Inc., 4545 Assembly Drive, Rockford, Illinois 61109 applied to be registered as an importer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The company plans to import for clinical trial only. Approval of applications will occur only when registrant's business activity is consistent with what is authorized under 21 U.S.C 952 (a) (2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: July 20, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–16464 Filed 7–31–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number XXXX-New]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: SMART Office, Office of Justice Programs, Department of Justice.

ACTION: 30 Day Notice.

SUMMARY: The Department of Justice, Office of Justice Programs, SMART Office, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until August 31, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Samantha Opong, Program Specialist, SMART Office, 810 7th Street NW Washington, DC 20531, *Samantha.Opong@usdoj.gov,* (202) 514–9320. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the SMART Office, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* This is a ''New collection,'' the collection has not previously been used or sponsored by the SMART Office.

The Title of the Form/Collection: Campus Information Sharing and Response Project.

As part of a fellowship project in the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs at the U.S. Department of Justice, the Campus Information Sharing and Response project is exploring how institutions of higher education share, respond and coordinate information to prevent sexual assault perpetration. This project will collect through an online questionnaire information about current practices utilized by colleges and universities with regards to the following:

- Policies and practices regarding registered sex offenders who may be students or employees
- Policies and practices regarding individuals found responsible and sanctioned for campus sexual misconduct policy violations
- Policies and practices used in reviewing criminal or disciplinary sexual misconduct history of prospective or current students.

2. The agency form number, if any, and the applicable component of the Department sponsoring the collection: There is no agency form number for this collection. The applicable component within the Department of Justice is the SMART Office.

Affected public who will be asked or required to respond, as well as a brief abstract: The respondents to this collection/affected public includes business or other for profit institutions of higher education, and not-for-profit institutions. The SMART Office is exploring how institutions of higher education share, respond and coordinate information to prevent sexual assault perpetration. This project will collect information about current policies and practices utilized by colleges and universities regarding registered sex offenders who may be students or employees; individuals

found responsible and sanctioned for campus sexual misconduct policy violations; and the review of criminal or disciplinary sexual misconduct history of prospective or current students.

3. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 respondents are estimated, and it will take each respondent approximately 15 minutes to complete the questionnaire.

4. An estimate of the total public burden (in hours) associated with the collection: Based on the estimate of 50 respondents, each taking approximately 15 minutes to complete the questionnaire, the estimated total public burden (in hours) associated with the collection is 12.5 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 27, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–16430 Filed 7–31–18; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0034]

Information Collection: Standards for Protection Against Radiation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Standards for Protection Against Radiation.''

DATES: Submit comments by August 31, 2018.

ADDRESSES: Submit comments directly to the OMB reviewer at: Mathew Oreska, Desk Officer, Office of Information and Regulatory Affairs (3150–0014), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–3621, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0034 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0034.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML18177A400.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Standards for Protection Against Radiation.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 10, 2018 (83 FR 15411).

1. *The title of the information collection:* 10 CFR part 20, ''Standards for Protection Against Radiation.''
2. *OMB approval number:* 3150–0014.
3. *Type of submission:* Extension.
4. *The form number if applicable:* Not Applicable.
5. *How often the collection is required or requested:* Annually for most reports and at license termination for reports dealing with decommissioning.
6. *Who will be required or asked to respond:* NRC licensees and Agreement State licensees, including those requesting license terminations. Types of licensees include civilian commercial, industrial, academic, and medical users of nuclear materials. Licenses are issued for, among other things, the possession, use, processing, handling, and importing and exporting of nuclear materials, and for the operation of nuclear reactors.
7. *The estimated number of annual responses:* 43,530 (11,739 for reporting [1,677 NRC licensees and 10,062 Agreement State licensees], 21,018 for recordkeeping [3,003 NRC licensees and 18,015 Agreement State licensees], and 10,773 for third-party disclosures [1,539 NRC licensees and 9,234 Agreement State licensees]).
8. *The estimated number of annual respondents:* 21,018 (3,003 NRC licensees and 18,015 Agreement State licensees).
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 640,776 hours (91,545 hours

for NRC licensees and 549,231 hours for Agreement State licensees).

10. *Abstract:* 10 CFR part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC and by Agreement States. These standards require the establishment of radiation protection programs, maintenance of radiation protection programs, maintenance of radiation records recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report to NRC and to Agreement States of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

Dated at Rockville, Maryland, on July 26, 2018.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–16390 Filed 7–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0151]

Information Collection: Request for Taxpayer Identification Number

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Request for Taxpayer Identification Number.''

DATES: Submit comments by October 1, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0151. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0151 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0151. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2018–0151 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and ''Request for Taxpayer Identification Number'' is available in ADAMS under Accession No. ADAMS ML18114A279.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2018–0151 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Request for Taxpayer Identification Number.
2. *OMB approval number:* 3150–0188.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 531.
5. *How often the collection is required or requested:* Licensees are only required to submit once, however, a continuous monthly request is sent until the licensee submits the Taxpayer Identification Number (TIN).
6. *Who will be required or asked to respond:* NRC Form 531 is used to collect TINs and information sufficient to identify the licensee or applicant for licenses, certificates, approvals and registrations.
7. *The estimated number of annual responses:* 300 responses.
8. *The estimated number of annual respondents:* 300 respondents.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 75 hours.

10. *Abstract:* The Debt Collection Improvement Act of 1996 requires that agencies collect TINs from individuals who do business with the Government, including contractors and recipients of credit, licenses, permits, and benefits. The TIN will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury. The Department of the Treasury will use the TIN to determine whether the refund can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, the TIN will be used to collect and report to the Department of the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 26th day of July 2018.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–16401 Filed 7–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278; NRC–2018–0130]

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application for the subsequent license renewal of Renewed Facility Operating License Nos. DPR–44 and DPR–56, which authorize Exelon Generation Company, LLC (the applicant) to operate Peach Bottom Atomic Power Station Units 2 and 3 (Peach Bottom). The renewed licenses would authorize the applicant to operate Peach Bottom for an additional 20 years beyond the period specified in each of the current renewed licenses. The current renewed operating licenses for Peach Bottom expire as follows: Unit 2 on August 8, 2033, and Unit 3 on July 2, 2034.

DATES: The license renewal application referenced in this document was submitted on July 10, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0130 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0130. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bennett M. Brady, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2941, email: *Bennett.Brady@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has received an application (ADAMS Package Accession No. ML18193A689) from Exelon Generation Company, LLC (Exelon or the applicant), dated July 10, 2018, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and part 54 of title 10 of the *Code of Federal Regulations,* to renew the operating licenses for Peach Bottom. Renewal of the licenses would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the respective current renewed operating licenses. The current renewed operating licenses for Peach Bottom expire as follows: Unit 2 on August 8, 2033, and Unit 3 on July 2, 2034. The Peach Bottom units are boiling water reactors located in Delta, PA, about 17.9 miles south of Lancaster, PA. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

A copy of the subsequent license renewal application for Peach Bottom is also available for inspection near the site at the Harford County Public Library: Whiteford Branch, 2407 Whiteford Rd, Whiteford, MD 21160.

Dated at Rockville, Maryland, this 26th day of July 2018.

For the Nuclear Regulatory Commission.

Emmanuel C. Sayoc,

Acting Chief, License Renewal Projects Branch, Division of Materials and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–16402 Filed 7–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0159]

Interim Staff Guidance for Decommissioning Funding Plans for Materials Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) on Decommissioning Funding Plans (DFP) for materials licensees. The purpose of this ISG is to provide the NRC staff and the industry with guidance based on recent developments and lessons learned in financial assurance since the last update to NUREG–1757, Vol. 3, Rev. 1, ''Consolidated Decommissioning Guidance Financial Assurance, Recordkeeping, and Timeliness'' (NUREG–1757, Vol. 3).

DATES: Submit comments by September 17, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0159. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–7075, email: *Kenneth.Kline@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0159 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0159.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ISG for Decommissioning Funding Plans for Materials Licensees is available in ADAMS under Accession No. ML18163A087.

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

B. Submitting Comments

Please include Docket ID NRC–2018–0159 in your comment submission.

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

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

II. Discussion

Since 1988, NRC licensees have been required to provide decommissioning financial assurance. The NRC published its ''Decommissioning Planning Rule'' in the **Federal Register** on June 17, 2011 (76 FR 35512). The rule became effective on December 17, 2012. The rule's purpose is to minimize the likelihood of new ''legacy sites,'' those sites owned or controlled by licensees with insufficient resources to complete decommissioning. Successful completion of decommissioning is a prerequisite to the NRC terminating the license.

The NRC's radioactive materials licensing regulations, part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Rules of General Applicability to Domestic Licensing of Byproduct Material''; 10 CFR part 40, ''Domestic Licensing of Source Material''; and 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' require NRC licensees to provide adequate financial assurance for all decommissioning activities.[1] The NRC staff utilizes NUREG–1757, Vol. 3 (ADAMS Accession No. ML12048A683), as guidance to evaluate DFPs submitted by 10 CFR parts 30, 40 and 70 licensees. The NRC's Regulatory Guide (RG) 4.22, ''Decommissioning Planning During Operations'' (ADAMS Accession No. ML12158A361), provides guidance to licensees for use during licensed operations to minimize radiological contamination, including radiological subsurface contamination, and to properly retain survey results. For those licensees having or likely to have significant residual radioactivity, RG 4.22 provides guidance on arranging for sufficient funding to complete decommissioning, thereby allowing the NRC to terminate the license.

The purpose of this ISG is to provide NRC staff and industry with guidance based on developments and lessons learned in financial assurance since the last update to NUREG–1757, Vol. 3. The ISG covers decommissioning cost estimates describing current facility conditions, evaluating events since the last DFP approval, and updates for certain financial instruments.

Dated at Rockville, Maryland, this 26th day of July, 2018.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–16392 Filed 7–31–18; 8:45 am]

BILLING CODE 7590–01–P

[1] The specific NRC regulations are 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25, each entitled ''Financial Assurance and Recordkeeping for Decommissioning.''

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7003; NRC–2018–0160]

American Centrifuge Operating, LCC; Lead Cascade Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) regarding a request from American Centrifuge Operating, LLC (ACO) for approval of its Decommissioning Plan. ACO is authorized to possess and use special nuclear material (SNM), source material, and byproduct material at its Lead Cascade Facility (LCF) in Piketon, Ohio under NRC License SNM–7003, issued in 2004. ACO's Decommissioning Plan contains its proposed Release Criteria and the Final Status Survey design.

DATES: The EA referenced in this document is available on August 1, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0160 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0160. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0867, email: *Jean.Trefethen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated January 5, 2018 (ADAMS Accession Number ML18025B285), American Centrifuge Operating, LLC (ACO or the licensee) requested NRC approval of ACO's Decommissioning Plan (DP). The DP contains ACO's proposed Release Criteria (RC) and Final Status Survey (FSS) design. The Lead Cascade Facility (LCF) is located at the Portsmouth Gaseous Diffusion Plant (PORTS) site in Pike County, Ohio. The PORTS site is owned by the U.S. Department of Energy (DOE), and the DOE leases portions of the PORTS site, including the LCF buildings, to the licensee. The NRC staff has prepared an Environmental Assessment (EA) (ADAMS Accession Number ML18204A294) as part of its review of this proposed action in accordance with the requirements in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions'' and associated staff guidance. The NRC has concluded that the proposed action will not have a significant effect on the quality of the human environment.

II. Summary of the Environmental Assessment

Description of the Proposed Action

The proposed action is to review and approve ACO's DP which provides the proposed RC and FSS design. The RC are regulatory limits identified in 10 CFR part 20.1402. The FSS is performed by the licensee to verify that residual contamination levels are less than these limits.

Need for the Proposed Action

By letter dated March 2, 2016, the licensee notified the NRC of its decision to permanently cease LCF operations (ADAMS Accession Number ML16074A405). In preparation for decommissioning of the LCF, termination of license SNM–7003, and potential future release of the site and return to DOE as outlined in the lease agreement, ACO has performed clean-up and survey activities.

Environmental Impacts of the Proposed Action

The NRC staff evaluated the potential environmental impacts associated with the proposed action, and has performed its environmental review in accordance with the requirements in 10 CFR part 51 and associated staff guidance. As detailed in the EA, the staff reviewed relevant information submitted by the licensee and consulted with the Ohio State Historic Preservation Office (SHPO), the Osage Nation, Advisory Council on Historic Preservation (ACHP), and the State of Ohio Department of Health (ODH).

Survey activities for the FSS have occurred inside the LCF buildings, and no land disturbance activities were involved or are planned. Therefore, the NRC staff considers that there would be no impacts to the following resources areas: Land use, geology and soils, water resources, ecology, meteorology, climate, air quality, noise, transportation, waste management, visual and scenic resources, and socioeconomic resources.

The NRC staff evaluated the radiological impacts to workers and the public. The staff found that the radiological doses to workers would be within the dose limits specified in 10 CFR 20.1201, ''Occupational dose limits to adults,'' and that radiological doses to the public would be indistinguishable when compared to background radiation.

The NRC staff also evaluated the cumulative impacts by identifying past, present, and reasonably foreseeable future actions at DOE's Piketon, Ohio site, and the incremental impacts of ACO's proposed action. The staff determined that the proposed action would not significantly contribute to cumulative impacts. The staff also determined that the proposed action would not affect federally-listed endangered or threatened species or their critical habitats, if present.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action and requesting ACO to submit a revised DP (*i.e.,* the ''no-action'' alternative). Under the no-action alternative, the LCF FSS and RC would not be approved and license termination would not be possible. The NRC considers the environmental impacts of this alternative to be similar to those of the proposed action. The no-action alternative does not comply with the licensee's commitments made during licensing or the decommissioning requirements of 10 CFR 70.38 and does not provide any environmental benefit. The NRC staff concludes that not approving the provided RC and FSS, which meet the regulatory requirements, is not a reasonable alternative to approving the proposed action.

Agencies and Persons Consulted

By letter dated June 12, 2018 (ADAMS Accession Number ML18130A468), the staff consulted with the ODH regarding the environmental impact of the proposed action. By letter dated July 6, 2018, the ODH replied indicating that they had no comments on the draft EA (ADAMS Accession Number ML18130A468). The NRC staff also consulted with the Ohio SHPO by letter dated April 9, 2018 (ADAMS Accession Number. ML18078B230). The Ohio SHPO responded by letter dated May 16, 2018, stating that they could not concur with a finding of No Adverse Effect for the proposed action and recommended that NRC initiate and carry out consultation and contact the ACHP (ADAMS Accession Number ML18155A296). On June 11, 2018, a

conference call was held between the Ohio SHPO, the ACHP, and the NRC to discuss the concerns expressed in the SHPO's May 16, 2018, letter. During the call the ACHP expressed its agreement with the NRC that the requested action falls under 36 CFR 800.3(a)(1), *No potential to cause effects,* which states, ''If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such properties were present, the agency official has no further obligations under Section 106 or this part''. The NRC sent a letter, dated July 16, 2018, to the Ohio SHPO summarizing the conference call and concluding Section 106 consultation (ADAMS Accession Number ML18171A218). By letter dated April 11, 2018, the NRC initiated Section 106 consultation under the National Historic Preservation Act with the Osage Nation. In their reply, the Osage Nation stated it concurred with the NRC determination that the proposed DP most likely would not adversely affect any sacred properties and/or properties of cultural significance to the Nation, and also stated, ''[t]he Osage Nation has no further concern with this project'' (ADAMS Accession Number ML18158A263).

III. Finding of No Significant Impact

In accordance with the requirements in 10 CFR part 51, the NRC staff has concluded that the proposed action will not significantly affect the quality of the human environment. Therefore, the staff finds, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action, and that a finding of no significant impact is appropriate.

Dated at Rockville, Maryland, this 26th day of July 2018.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2018–16404 Filed 7–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409; NRC–2018–0157]

LaCrosse Solutions, LLC; Dairyland Power Cooperative La Crosse Boiling Water Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a February 22, 2018, request from LaCrosse*Solutions,* LLC (LS) from the regulatory requirement to maintain a specified level of onsite property damage insurance to permit the La Crosse Boiling Water Reactor (LACBWR) to reduce its onsite insurance coverage from $180 million to $50 million.

DATES: The exemption was issued on July 24, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0157 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0157. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Marlayna G. Vaaler, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3178, email: *Marlayna.Vaaler@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The La Crosse Boiling Water Reactor was an Atomic Energy Commission (AEC) Demonstration Project Reactor that first went critical in 1967, commenced commercial operation in November 1969, and was capable of producing 50 megawatts of electric power. The LACBWR site is located on the east bank of the Mississippi River in Vernon County, Wisconsin, and is co-located with the Genoa Generating Station, which is a coal-fired electrical power plant that is still in operation. The Allis-Chalmers Company was the original licensee; the AEC later sold the plant to the Dairyland Power Cooperative (DPC) and granted it Provisional Operating License No. DPR–45 on August 28, 1973 (ADAMS Accession No. ML17080A423).

The LACBWR permanently ceased operations on April 30, 1987 (ADAMS Accession No. ML17080A422), and reactor defueling was completed on June 11, 1987 (ADAMS Accession No. ML17080A420). In a letter dated August 4, 1987 (ADAMS Accession No. ML17080A393), the NRC terminated DPC's authority to operate LACBWR under Provisional Operating License No. DPR–45, and granted the licensee a possess-but-not-operate status. By letter dated August 18, 1988 (ADAMS Accession No. ML17080A421), the NRC amended DPC's Provisional Operating License No. DPR–45 to Possession Only License No. DPR–45 to reflect the permanently defueled configuration at LACBWR.

The NRC issued an order to authorize decommissioning of LACBWR and approve the licensee's proposed Decommissioning Plan (DP) on August 7, 1991 (ADAMS Accession No. ML17080A454). Because the NRC approved DPC's DP before August 28, 1996, pursuant to section 50.82 of title 10 of the *Code of Federal Regulations* (10 CFR), the DP is considered the Post-Shutdown Decommissioning Activities Report (PSDAR) for LACBWR. The PSDAR public meeting was held on May 13, 1998, and subsequent updates to the LACBWR decommissioning report have combined the DP and PSDAR into the ''LACBWR Decommissioning Plan and Post-Shutdown Decommissioning Activities Report'' (D-Plan/PSDAR). This document is also considered the Final Safety Analysis Report (FSAR) for LACBWR and is updated every 24 months in accordance with 10 CFR 50.71(e). The DPC constructed an onsite Independent Spent Fuel Storage Installation (ISFSI) under its 10 CFR part 72 general license, and completed the movement of all 333 spent nuclear fuel elements from the Fuel Element Storage Well to dry cask storage at the ISFSI by September 19, 2012 (ADAMS Accession No. ML12290A027). The remaining associated buildings and structures are currently undergoing

dismantlement and decommissioning activities.

By order dated May 20, 2016 (ADAMS Accession No. ML16123A073), the NRC approved the direct transfer of Possession Only License No. DPR–45 for LACBWR from DPC to LS, a wholly-owned subsidiary of Energy*Solutions,* LLC, and approved a conforming license amendment, pursuant to 10 CFR 50.80, ''Transfer of licenses,'' and 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit,'' to reflect the change. The order was published in the **Federal Register** (FR) on June 2, 2016 (81 FR 35383). The transfer assigns DPC's licensed possession, maintenance, and decommissioning responsibilities for LACBWR to LS in order to implement expedited decommissioning at the LACBWR site. Decommissioning of the LACBWR facility and site is scheduled to be completed in 2018.

II. Request/Action

Pursuant to 10 CFR 50.12, ''Specific exemptions,'' LS has requested an exemption from 10 CFR 50.54(w)(1) by letter dated February 22, 2018 (ADAMS Accession No. ML18057A021). The exemption from the requirements of 10 CFR 50.54(w)(1) would permit LS to reduce its onsite property damage insurance from $180 million to $50 million.

The regulation in 10 CFR 50.54(w)(1) requires each licensee to have and maintain onsite property damage insurance to stabilize and decontaminate the reactor and reactor site in the event of an accident. The onsite insurance coverage must be either $1.06 billion or whatever amount of insurance is generally available from private sources (whichever is less). The LACBWR site currently maintains $180 million in onsite insurance coverage in accordance with a previous exemption approved by the NRC on June 26, 1986 (51 FR 24456).[1]

The licensee stated that there is a reduced potential for, and consequences from, an accident at a permanently shutdown and defueled reactor when compared to the risks at an operating power reactor. In addition, since the license no longer authorizes reactor operation or emplacement or retention of fuel in the reactor vessel at LACBWR, there are no events that would require the stabilization of reactor conditions after an accident. Similarly, the risk of an accident that that would result in significant onsite contamination at LACBWR is also much lower than the risk of such an event at an operating reactor. Therefore, LS requested an exemption from 10 CFR 50.54(w)(1) that would permit a reduction in its onsite property damage insurance from $180 million to $50 million, commensurate with the reduced risk of an accident at the permanently shutdown and defueled LACBWR reactor.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present.

The financial protection limits of 10 CFR 50.54(w)(1) were established after the Three Mile Island accident out of concern that licensees may be unable to financially cover onsite cleanup costs in the event of a major nuclear accident. The specified coverage requirement was developed based on an analysis of an accident at a nuclear reactor operating at power, resulting in a large fission product release and requiring significant resource expenditures to stabilize the reactor conditions and ultimately decontaminate and clean up the site.

The NRC developed these cost estimates from the spectrum of postulated accidents for an operating nuclear reactor and the consequences of any associated release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences can be large. In an operating plant, the high temperature and pressure of the reactor coolant system, as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. With the permanent cessation of reactor operations at LACBWR, the permanent removal of the fuel from the reactor core, and the movement of all the irradiated fuel assemblies into storage at the onsite ISFSI, such accidents are no longer possible. As a result, the reactor, reactor coolant system, and supporting systems no longer operate, and the majority of these components have already been dismantled and removed from the site as part of the decommissioning process. Therefore, these systems and components no longer serve any function related to the storage of the irradiated fuel. As such, postulated accidents involving failure or malfunction of the reactor, reactor coolant system, or supporting systems are no longer applicable at LACBWR.

During reactor decommissioning, the principal radiological risks are associated with the storage of spent fuel onsite, as well as the inventory of radioactive liquids, activated reactor components, and contaminated materials. In its February 22, 2018, exemption request, LS noted that because all of the irradiated fuel assemblies are currently stored in the onsite ISFSI, a fuel handling accident and a zirconium fire caused by drain down of the spent fuel pool are no longer considered credible events. In the current state of decommissioning at LACBWR, with the reactor building being the only contaminated structure that still remains onsite, only minor liquid and airborne effluent releases resulting from dismantlement activities are considered credible events. The licensee determined that the minimal radioactive material remaining at the site that resulted from LACBWR's operation is insufficient for any potential event to result in exceeding dose limits or otherwise involving a significant adverse effect on public health and safety.

Specifically, there are no credible events at LACBWR that could result in a radiological release exceeding the limits established by the U.S. Environmental Protection Agency's (EPA's) early-phase Protective Action Guidelines (PAGs) of one roentgen equivalent man at the exclusion area boundary, which demonstrates that any possible radiological releases would be minimal and would not require precautionary protective actions (*e.g.,* sheltering in place or evacuation). The staff evaluated the radiological consequences associated with various decommissioning activities, and credible accident events at LACBWR, in consideration of the permanently shutdown and defueled status of the facility. The possible accident scenarios at LACBWR have greatly reduced radiological consequences. Based on its review, the staff concluded that no reasonably conceivable radiological release event exists that could cause an offsite release greater than the EPA PAGs.

In addition, given that all of the irradiated fuel assemblies at LACBWR have already been moved into storage at the onsite ISFSI, the fuel is no longer thermal-hydraulically capable of sustaining a zirconium fire, and can be

[1] At the time the previous exemption was granted in 1986, 10 CFR 50.54(w)(1) required the licensee to maintain on-site property insurance in the amount of $500 million. Based on a finding that special circumstances were present, the Commission approved the licensee's exemption request to permit LACBWR to reduce its onsite insurance coverage from $500 million to $180 million. *See* 51 FR 24456.

air-cooled in all credible accident scenarios and fuel configurations. Since NRC approval of the previous exemption in 1986, which permitted LACBWR to reduce its onsite insurance coverage to $180 million, the NRC staff has authorized a lesser amount of onsite property damage insurance coverage based on an analysis of the zirconium fire risk. In SECY–96–256, ''Changes to Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w)(1) and 10 CFR 140.11,'' dated December 17, 1996 (ADAMS Accession No. ML15062A483), the NRC staff recommended changes to the power reactor insurance regulations that would allow licensees to lower onsite insurance levels to $50 million upon demonstration that the fuel stored in the spent fuel pool can be air-cooled.

In its Staff Requirements Memorandum to SECY–96–256, dated January 28, 1997 (ADAMS Accession No. ML15062A454), the Commission supported the staff's recommendation that, among other things, would allow permanently shutdown power reactor licensees to reduce commercial onsite property damage insurance coverage to $50 million when the licensee was able to demonstrate the technical criterion that the spent fuel could be air-cooled if the spent fuel pool was drained of water. The staff has used this technical criterion to grant similar exemptions to other decommissioning reactors (*e.g.,* Maine Yankee Atomic Power Station, published in the **Federal Register** on January 19, 1999 (64 FR 2920); and Zion Nuclear Power Station, published in the **Federal Register** on December 28, 1999 (64 FR 72700)). These prior exemptions were based on the licensees demonstrating that the spent fuel could be air-cooled, consistent with the technical criterion discussed above. Based on this criterion, the NRC staff determined $50 million to be an adequate level of onsite property damage insurance coverage for the LACBWR site, given that the spent fuel is no longer susceptible to a zirconium fire.

In addition, the staff has postulated that there is still a potential for other radiological incidents at a decommissioning reactor that could result in significant onsite contamination besides a zirconium fire. In SECY–96–256, the NRC staff cited the rupture of a large contaminated liquid storage tank, causing soil contamination and potential groundwater contamination, as the most costly postulated event to decontaminate and remediate (other than a zirconium fire). The postulated large liquid radiological waste storage tank rupture event was determined to have a bounding onsite cleanup cost of approximately $50 million. However, decommissioning activities at LACBWR have progressed to such an extent that there are no longer any large radiological waste storage tanks onsite, as described in the most recent update to the D-Plan/PSDAR (ADAMS Accession No. ML18155A395). The only potential source of radioactive liquid remaining at LACBWR is water generated during decommissioning and decontamination activities (*e.g.,* draining, decontamination, and cutting processes), including the retention tank used to store this water, which has a total capacity of 6000 gallons and is therefore considerably less that the 450,000 gallon large contaminated liquid storage tank postulated in SECY–96–256. According to the analysis described in the LACBWR D-Plan/PSDAR, in the event that 80 percent of the retention tank volume were to be released from the tank via a non-mechanistic rupture, the normal effluent concentration limits of 10 CFR part 20, ''Standards for Protection Against Radiation,'' appendix B, table 2, would not be exceeded. The staff has examined this analysis and concluded that there are no credible phenomena that could reasonably be postulated to cause a release from the LACBWR retention tank that would challenge the assumptions made in SECY–96–256 regarding the rupture of a large contaminated liquid storage tank. Therefore, the staff determined that the licensee's proposal to reduce onsite insurance to a level of $50 million would be consistent with the bounding cleanup and decontamination cost, as discussed in SECY–96–256, to account for the postulated rupture of the retention tank at the LACBWR site.

A. Authorized by Law

The regulation in 10 CFR 50.54(w)(1) requires each licensee to have and maintain onsite property damage insurance of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. In accordance with 10 CFR 50.12, the Commission may grant exemptions from the regulations in 10 CFR part 50, as the Commission determines are authorized by law.

In 1986, the Commission granted LACBWR an exemption from 10 CFR 50.54(w)(1), permitting the reduction of onsite insurance coverage from $500 million to $180 million. As explained above, the NRC staff has determined that the licensee's proposed reduction in onsite property damage insurance coverage to a level of $50 million is consistent with SECY–96–256 because there is no credible risk of a zirconium fire with all irradiated fuel stored in the onsite ISFSI, where it is air-cooled in all accident scenarios.

The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, or other laws, as amended. Therefore, based on its review of LS's exemption request, as discussed above, and consistent with SECY–96–256, the NRC staff concludes that the exemption is authorized by law.

B. No Undue Risk to Public Health and Safety

The onsite property damage insurance requirements of 10 CFR 50.54(w)(1) were established to provide financial assurance that following a significant nuclear accident, onsite reactor conditions could be stabilized and the site decontaminated. The requirements of 10 CFR 50.54(w)(1) and the existing level of onsite insurance coverage for LACBWR are predicated on the assumption that the reactor is operating. However, LACBWR is a permanently shutdown and defueled facility. The permanently defueled status of the facility has resulted in a significant reduction in the number and severity of potential accidents, and correspondingly, a significant reduction in the potential for and severity of onsite property damage. The proposed reduction in the amount of onsite insurance coverage does not impact the probability or consequences of potential accidents. The proposed level of insurance coverage is commensurate with the reduced consequences of credible nuclear accidents at LACBWR. Therefore, the NRC staff concludes that granting the requested exemption will not present an undue risk to the health and safety of the public.

C. Consistent With the Common Defense and Security

The proposed exemption would not eliminate any requirements associated with physical protection of the site and would not adversely affect LS's ability to physically secure the site or protect special nuclear material. Physical security measures at LACBWR are not affected by the requested exemption. Therefore, the proposed exemption is consistent with the common defense and security.

D. Special Circumstances

Under 10 CFR 50.12(a)(2)(ii), special circumstances are present if the application of the regulation in the particular circumstances would not

serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.54(w)(1) is to provide reasonable assurance that adequate funds will be available to stabilize reactor conditions and cover onsite cleanup costs associated with site decontamination, following an accident that results in the release of a significant amount of radiological material.

Because LACBWR is permanently shutdown and defueled, with all irradiated fuel assemblies stored in the onsite ISFSI, and a very small radioactive source term remaining at the site given the progress of decommissioning and dismantlement activities, it is no longer possible for the radiological consequences of design-basis accidents or other credible events at LACBWR to exceed the limits of the EPA PAGs at the exclusion area boundary. Therefore, the staff concludes that the application of the current requirements in 10 CFR 50.54(w)(1), as exempted, for LS to maintain $180 million in onsite insurance coverage is not necessary to achieve the underlying purpose of the rule for the permanently shutdown and defueled LACBWR facility.

Under 10 CFR 50.12(a)(2)(iii), special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The NRC staff concludes that if the licensee was required to continue to maintain an onsite insurance level of $180 million, the associated insurance premiums would be in excess of those necessary and commensurate with the radiological contamination risks posed by the site. In addition, such insurance levels would be significantly in excess of other decommissioning reactor facilities that have been granted similar exemptions by the NRC.

As such, the NRC staff finds that compliance with the existing requirement would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted and are significantly in excess of those incurred by others similarly situated. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist for the LACBWR facility.

E. Environmental Considerations

The NRC approval of an exemption to insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: Surety, insurance, or indemnity requirements.

The Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards, has determined that approval of the exemption request involves no significant hazards consideration because reducing the licensee's onsite property damage insurance for LACBWR does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of LACBWR. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure.

The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident), nor mitigation. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. The requirement for onsite property damage insurance involves surety, insurance, and indemnity matters. Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants LS an exemption from the requirements of 10 CFR 50.54(w)(1), to permit the licensee to reduce its onsite property damage insurance coverage to a level of $50 million.

Dated at Rockville, Maryland, this 26th day of July 2018.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–16393 Filed 7–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0156]

Information Collection: NRC Form 748, National Source Tracking Transaction Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''NRC Form 748, National Source Tracking Transaction Report.''

DATES: Submit comments by October 1, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0156. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0156 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0156. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2018–0156 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML18114A723. The supporting statement is available in ADAMS under Accession No. ML18114A745.

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

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2018–0156 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 748, National Source Tracking Transaction Report.
2. *OMB approval number:* 3150–0202.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 748.
5. *How often the collection is required or requested:* On occasion (at completion of a transaction, and at inventory reconciliation).
6. *Who will be required or asked to respond:* Licensees that manufacture, receive, transfer, disassemble, or dispose of nationally tracked sources.
7. *The estimated number of annual responses:* 18,927 (13,200 online + 480 batch upload + 5,247 NRC Form 748).
8. *The estimated number of annual respondents:* 1,400 (260 NRC Licensees + 1,140 Agreement State Licensees).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1,963.1.
10. *Abstract:* In 2006, the NRC amended its regulations to implement a National Source Tracking System (NSTS) for certain sealed sources. The amendments require licensees to report certain transactions involving nationally tracked sources to the NSTS. These transactions include manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked source. This information collection is mandatory and is used to populate the NSTS. National source tracking is part of a comprehensive radioactive source control program for radioactive materials of greatest concern. The NRC and Agreement States uses the information provided by licensees in the NSTS to track the life cycle of the nationally tracked source from manufacture through shipment receipt, decay, and burial. NSTS enhances the ability of NRC and Agreement States to conduct inspections and investigations, communicate information to other government agencies, and verify legitimate ownership and use of nationally tracked sources.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 26th day of July, 2018.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–16391 Filed 7–31–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0047]

Information Collection: Domestic Licensing of Source Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Domestic Licensing of Source Material.''

DATES: Submit comments by October 1, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0047. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0047 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0047.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML18136A682 and ML18136A688.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 40, ''Domestic Licensing of Source Material.''
2. *OMB approval number:* 3150–0020.
3. *Type of submission:* Revision.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Reports required under 10 CFR part 40 collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications need to be submitted every 15 to 40 years. Information in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.
6. *Who will be required or asked to respond:* Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer of radioactive source material.
7. *The estimated number of annual responses:* 1,390 (750 reporting responses + 6 third party disclosure responses + 634 recordkeepers).
8. *The estimated number of annual respondents:* 634.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 16,928 (11,366 reporting + 5,544 recordkeeping + 18 third party disclosure).
10. *Abstract:* The U.S. Nuclear Regulatory Commission (NRC) regulations in 10 CFR part 40 establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct material. The application, reporting, recordkeeping, and third party notification requirements are necessary to permit the NRC to make a determination as to whether the possession, use, and transfer of source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents

be minimized, including the use of automated collection techniques or other forms of information technology?

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

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–16428 Filed 7–31–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83713; File No. SR–MSRB–2018–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MSRB Rule A–13 to Temporarily Reduce the Rate of Assessment for the MSRB's Underwriting, Transaction and Technology Fees on Brokers, Dealers and Municipal Securities Dealers

July 26, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 23, 2018 the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to amend MSRB Rule A–13 to temporarily reduce the rate of assessment for the MSRB's underwriting, transaction and technology fees on brokers, dealers and municipal securities dealers (''dealers'') with respect to assessible activity that occurs during the months of October, November and December 2018 (the ''proposed rule change''). The MSRB has designated the proposed rule change for immediate effectiveness.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2018-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to temporarily reduce the rate of assessment for the MSRB's underwriting, transaction and technology fees for dealers under Rule A–13, with respect to assessible activity that occurs during the months of October, November and December 2018. The proposed rule change is designed to reduce, in a carefully considered and strategic manner, excess MSRB reserves in a way that achieves a fair and equitable balance of fees across regulated entities.

The MSRB discharges its statutory mandate under the Exchange Act through the establishment of rules for dealers and municipal advisors (together with dealers, ''regulated entities''); the collection and dissemination of market information; and market leadership, outreach and education. As a self-regulatory organization, the MSRB must maintain sufficient reserves to discharge its responsibilities and operate without interruption, even in an economic downturn. Reserves are necessary to mitigate fluctuations in the MSRB's revenue stream, which is primarily market-driven, and provide a backstop for funding services essential to the efficiency of the market. However, as current reserves exceed the target thresholds that have been established by its Board of Directors, the MSRB is now seeking to temporarily reduce its three largest sources of revenue, which collectively, make up approximately 80% of the MSRB's FY 2018 budgeted revenue. The proposed rule change is projected to reduce the MSRB's excess reserves by approximately $2.6 million and will help align reserve levels with target levels.

Pursuant to Rule A–13, each dealer must pay to the Board underwriting, transaction and technology fees based upon the rates specified in that rule. The proposed rule change would add a new section (h) setting forth revised temporary assessment rates for these three types of assessments, generally reducing by one-third the fees for activity that occurs during the months of October, November and December 2018. New Rule A–13(h)(i) would provide that the underwriting assessment for certain primary offerings for this time period would be .00185% of the par value ($0.0185 per $1,000), a reduction from .00275% of the par value ($.0275 per $1,000). New Rule A–13(h)(ii) would provide that the transaction assessment would be .00067% of the par value ($0.0067 per $1,000), a reduction from .001% ($.01 per $1,000). And, new Rule A–13(h)(iii) would provide that the technology assessment would be $0.67 per transaction (a reduction from $1.00 per transaction). Rates of assessment would revert to current levels effective January 1, 2019.

Importantly, the temporary reduced rates are for activity that occurs during this three-month period. Dealers are typically billed for these fees after the relevant month end. Specifically, the underwriting fee is billed immediately after the respective month end, while the transaction and technology fees are billed thirty days in arrears.

Financial Reserves and the Board's Holistic Review of MSRB Fees

In 2010, after several years of heavy investment in the technological infrastructure needed to launch the MSRB's Electronic Municipal Market Access (EMMA®) website, the MSRB's financial reserve levels had dropped below the target of 12 months of operating expenses excluding depreciation expense, plus three-times annual capital needs. As a result, replenishing the MSRB's reserves became a priority. The following year, the MSRB increased the transaction fee under Rule A–13 and began assessing a new technology fee for dealers under the same rule.[3] By 2014, revenue from the technology fee had generated sufficient resources to stabilize the technology reserve and allowed the MSRB to rebate $3.6 million in technology fees to eligible dealers. The Board's technology fee rebate decision

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–63621 (Dec. 29, 2010), 76 FR 604 (Jan. 5, 2011) (File No. SR–MSRB–2010–10).

and analysis of reserve levels prompted it in 2015 to conduct a holistic review of fees from dealer assessments, municipal advisors and other sources to determine whether further changes to the funding structure were warranted.

The Board evaluated the assessment of MSRB fees on regulated entities with the goal of better aligning revenue sources with operating expenses and all capital needs. The Board strives to diversify funding sources among regulated entities and other entities that fund MSRB services in a manner that ensures long-term sustainability, while continuing to strike an equitable balance in fees among regulated entities and a fair allocation of the cost of operating and administering the MSRB, including regulatory activities, systems development and operational activities. The Board, as it has historically, strives to continually refine its fee structure to ensure it is balanced and fair and provides for reasonable cost allocation.

The first outcome of the holistic review was to substantially reduce (by 8.3%) the fee assessed on municipal securities underwriters. At the same time, the MSRB raised initial registration fees (which had not been adjusted since 1975) and annual fees (which had not been adjusted since 2009)—fees that are paid by all regulated entities—to better align with the cost of administering registrants and ensure that all registrants more fairly contributed to defraying the costs and expenses of operating and administering the MSRB. With the extension of the MSRB's jurisdiction to regulate municipal advisors, this class of regulated entity began contributing to the cost of MSRB regulation in 2014.[4] To further the objective of appropriately and equitably assessing fees across all regulated activities, in 2018, the MSRB introduced a new fee on underwriters of 529 plans, as underwriters to 529 plans had not previously paid a fee in this capacity.[5]

The current fees assessed on regulated entities are:

1. Municipal advisor professional fee (Rule A–11). $500 for each person associated with the municipal advisor who is qualified as a municipal advisor representative in accordance with Rule G–3 and for whom the municipal advisor has on file with the SEC a Form MA–I as of January 31 of each year;

2. Initial registration fee (Rule A–12). $1,000 one-time registration fee to be paid by each dealer to register with the MSRB before engaging in municipal securities activities and by each municipal advisor to register with the MSRB before engaging in municipal advisory activities;

3. Annual registration fee (Rule A–12). $1,000 annual fee to be paid by each dealer and municipal advisor registered with the MSRB;

4. Late fee (Rule A–11 and Rule A–12). $25 monthly late fee and a late fee on the overdue balance (computed according to the prime rate) until paid on balances not paid within 30 days of the invoice date by the dealer or municipal advisor;

5. Underwriting fee (Rule A–13). $.0275 per $1,000 of the par value paid by a dealer, on all municipal securities purchased from an issuer by or through such dealer, whether acting as principal or agent as part of a primary offering; and in the case of an underwriter (as defined in Rule G–45) of a primary offering of certain municipal fund securities, $.005 per $1,000 of the total aggregate assets for the reporting period;

6. Transaction fee (Rule A–13). .001% ($.01 per $1,000) of the total par value to be paid by a dealer, except in limited circumstances, for inter-dealer sales and customer sales reported to the MSRB pursuant to Rule G–14(b), on transaction reporting requirements;

7. Technology fee (Rule A–13). $1.00 paid by a dealer per transaction for each inter-dealer sale and for each sale to customers reported to the MSRB pursuant to Rule G–14(b); and

8. Examination fee (Rule A–16). $150 test development fee assessed per candidate for each MSRB examination.[6]

Notably, while all regulated entities contribute to the MSRB's revenue base, the three fees that are the subject of the proposed rule change (underwriting, transaction and technology fees) constitute approximately 80% of the MSRB's FY 2018 budgeted revenue. As the most significant contributors to MSRB funding, as well as being market based and historically contributing more than budgeted, these three fees are the primary drivers for the excess reserves.[7] While the fees generated from municipal advisors contribute to the MSRB's budget, the fees charged for this newly regulated category of professionals remain relatively modest and do not yet meet target revenues.[8] Accordingly, the Board determined that these three fees exclusively should be temporarily reduced for the designated period.

Since the initiation of the Board's holistic review of fees, MSRB reserves continued to grow due to strong revenue results compared to budget, as well as expense savings, and bolstered reserve levels to the point where another rebate was warranted in 2016. That year, the MSRB rebated $5.5 million of excess reserves to dealers who were assessed underwriting, transaction and technology fees during the first nine months of the fiscal year. In total, $9.1 million was returned to dealers in fee rebates since 2014. However, the fee rebates were not without their operational challenges. Industry feedback suggested that underwriting fee rebates can be problematic due to inherent complications of processing and potentially redistributing pro rata shares to syndicate members. Moreover, the MSRB believes that the approach taken in the proposed rule change (*i.e.,* a temporary reduction in dealer fees) would be fairer than another alternative approach, such as a fee holiday. For a fee holiday, the MSRB would forego charging fees for one month—but, because of the difficulties in selecting a single month that is representative of dealer activity for all dealers subject to the relevant fees, the MSRB believes that a temporary fee reduction that occurs over the course of several months is more likely to lead to a fair and equitable fee reduction across dealers. Accordingly, the Board has determined that a temporary three-month fee reduction, rather than a fee rebate or fee holiday, is a preferable mode of reducing its reserves.

The Board strives to be fiscally responsible. Since approximately 80% of the Board's revenue sources are market based, which is inherently unpredictable and largely has exceeded budget, and the Board has a historical track record of managing expenses to below budget, reserves continue to grow. The Board seeks to strike the right balance in fee assessments to maintain sufficient reserves to ensure fiscal sustainability, while providing relief to regulated entities that have contributed

[4] *See* Release No. 34–72019 (Apr. 25, 2014), 79 FR 24798 (May 1, 2014) (File No. SR–MSRB–2014–03).

[5] *See* Release No. 34–81264 (Jul 31, 2017), 82 FR 36472 (Aug. 4, 2017) (File No. SR–MSRB–2017–05).

[6] In addition, the MSRB charges data subscription service fees for subscribers, including dealers and municipal advisors, seeking direct electronic delivery of municipal trade data and disclosure documents associated with municipal bond issues. However, this information is available without direct electronic delivery on the EMMA website without charge.

[7] Reserves also grew due to fine revenue, a new revenue source first provided in 2010 under the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* 15 U.S.C. 78*o*-4(c)(9).

[8] *See* Release No. 34–81841 (Oct. 10, 2017), 82 FR 48135, 48138 (Oct. 16, 2017) (File No. SR–MSRB–2017–07) (noting that the target revenue to be generated from the municipal advisor fee under Rule A–11 was approximately $2 million, or approximately 5% of the total MSRB revenues). At present, the municipal advisor professional fee generates approximately $1.5 million, or 4% of the MSRB's Fiscal Year 2018 budgeted revenues.

to the excess reserves position. The temporary three-month fee reduction continues these ongoing efforts.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act [9] which states that the MSRB's rules shall:

provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges, which may include charges for failure to submit to the Board, or to any information system operated by the Board, within the prescribed timeframes, any items of information or documents required to be submitted under any rule issued by the Board.

The MSRB believes that its rules provide for reasonable dues, fees, and other charges among regulated entities. The MSRB believes that the proposed rule change is necessary and appropriate to fund the operation and administration of the Board and satisfies the requirements of Section 15B(b)(2)(J),[10] achieving a more equitable balance of fees among regulated entities and a fairer allocation of the expenses of the regulatory activities, system development, and operational activities undertaken by the MSRB because it temporarily decreases fees for the regulated entities that financially contribute the greatest to the cost of MSRB activities.

As described above, current reserve levels exceed targets, but looking forward to FY 2020, the MSRB's pro formas project reserves to fall modestly below targeted levels with the temporary fee reduction. As a result, the MSRB believes that it is preferable to temporarily reduce fees rather than take an alternative approach, such as a permanent fee reduction. Also, the MSRB believes a temporary fee reduction is preferable to a fee rebate because it would be operationally easier for dealers as dealers would be able to incorporate temporarily reduced fee rates into their business processes in advance rather than receive a rebate associated with past activity that may need to be redistributed through or across organizations. Finally, the MSRB believes that the proposed rule change would achieve a more equitable balance among regulated entities and a fairer allocation of the MSRB's expenses because the three fees that are the subject of the proposed rule change, representing approximately 80% of the MSRB's FY 2018 revenue budget, have contributed most to funding operations of the MSRB and concurrently contributed the most to the current reserve levels.

While the MSRB has progressively budgeted for municipal advisor fees to defray a greater portion of the cost of the MSRB's municipal advisor-related activity,[11] municipal advisor fees have comprised a very small portion of the MSRB's revenues and have not contributed to the MSRB's excess reserves position. For these same reasons, the beneficiaries of the proposed rule change are generally the same group of regulated entities that received the fee rebates in 2014 and 2016, as described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act [12] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Board's policy on the use of economic analysis limits its applications regarding those rules for which the Board seeks immediate effectiveness.[13] However, an internal analysis is still conducted to gauge the economic impact, with an emphasis on the burden on competition involving regulated entities.

In this regard, the Board believes the proposed rule change is necessary and appropriate to promote fairness in funding the operation and administration of the Board and would achieve a more equitable balance among regulated entities and a more balanced allocation of the expenses of the regulatory activities, system development, and operational activities undertaken by the MSRB. Because the three fees that are the subject of the proposed rule change (underwriting, transaction and technology fees) are the primary drivers for the MSRB's excess reserves, the Board believes that it is appropriate to temporarily reduce these fees for the designated period.

The MSRB does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it would temporarily decrease by the same percentage the underwriting, transaction and technology fees for all dealers subject to these fees.

The MSRB believes that the proposed rule change would not impose an unnecessary or inappropriate regulatory burden on small regulated entities, as smaller dealers would benefit from the temporary fee reduction in the same proportion as larger dealers in relation to the assessible activity during the relevant three-month period.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b–4(f)(2)[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–MSRB-2018–06 on the subject line.

[9] 15 U.S.C. 78*o*–4(b)(2)(J).

[10] *Id.*

[11] *See supra* n. 8.

[12] 15 U.S.C. 78*o*–4(b)(2)(C).

[13] The scope of the Board's policy on the use of economic analysis in rulemaking provides that:

[t]his Policy addresses rulemaking activities of the MSRB that culminate, or are expected to culminate, in a filing of a proposed rule change with the SEC under Section 19(b) of the Exchange Act, other than a proposed rule change that the MSRB reasonably believes would qualify for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act if filed as such or as otherwise provided under the exception process of this Policy.

Policy on the Use of Economic Analysis in MSRB Rulemaking, available at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx.* For those rule changes which the MSRB seeks immediate effectiveness, the MSRB usually focuses exclusively its examination on the burden of competition on regulated entities.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2018–06. 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 MSRB. 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–MSRB–2018–06 and should be submitted on or before August 22, 2018.

For the Commission, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16419 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83712; File No. SR–DTC–2018–004]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Clarifying Changes and Updates to the DTC Underwriting Service Guide

July 26, 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 July 20, 2018, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of DTC[5] consists of modifications to the DTC Underwriting Service Guide (''Underwriting Guide'')[6] to (i) promote consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, (ii) make clarifying and technical changes and (iii) provide enhanced readability and transparency for users of DTC's underwriting service (''Underwriting Service''), as described below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf,* and the DTC Operational Arrangements for Securities to Become and Remain Eligible for DTC Services (''OA''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[6] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf.* The Underwriting Guide and the OA constitute Procedures of DTC. Pursuant to the Rules, the term ''Procedures'' means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. *See* Rule 1, Section 1, *supra* note 5. DTC's Procedures are filed with the Commission. They are binding on DTC and each Participant in the same manner as they are bound by the Rules. *See* Rule 27, *supra* note 5. The OA is also binding on each Issuer and Agent of an Eligible Security. *See* OA at 5, *supra* note 5. DTC also maintains service guides that constitute Procedures relating to other services it offers, including the ''Canadian-Link Service Guide,'' ''Custody Service Guide'' (defined below as ''Custody Guide''), ''Deposits Service Guide,'' ''Distributions Service Guide,'' ''Redemptions Service Guide,'' ''Reorganizations Service Guide'' and ''Settlement Service Guide.'' *Available at http://www.dtcc.com/legal/rules-and-procedures?subsidiary=DTC&pgs=1.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of proposed modifications to the Underwriting Guide to (i) promote consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, (ii) make clarifying and technical changes and (iii) provide enhanced readability and transparency for users of DTC's Underwriting Service, as described below.

Background

Eligible Securities[7] may be introduced into DTC as new issuances (''New Issues'') through the Underwriting Service, in connection with a Participant, or a correspondent working though a Participant's Account, submitting an eligibility request.[8] In addition to the process for New Issues, there are separate eligibility processes for (i) older issues (''Older Issues''), *i.e.,* those already available in the market but not previously made eligible for deposit at DTC[9] and (ii) Eligible Securities in

[7] Generally, Eligible Securities must have been issued in a transaction: (i) Registered with the Commission pursuant to the Securities Act; (ii) exempt from registration pursuant to a Securities Act exemption without transfer or ownership restrictions; or (iii) pursuant to Rule 144A, 17 CFR 230.144A, or Regulation S, 17 CFR 230.901–230.905, under the Securities Act. *See* OA, *supra* note 5 at 2–3.

[8] *See* OA, *supra* note 5 at 1–2.

[9] *Id.*

the MMI Program.[10] Other issues of Securities may be added through corporate actions with respect to existing Eligible Securities, including events such as name changes, mergers and spinoffs, which are also reviewed for continuing eligibility.[11]

The Underwriting Service also supports other DTC functions and services relating to the underwriting function, including the IPO Tracking system,[12] eligibility processing for the DTC custody service (''Custody Service''),[13] and the security holder tracking service (''Security Holder Tracking Service'').[14]

The proposed rule change would make modifications to the Underwriting Guide to (i) promote consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, specifically the OA [15] and the Custody Guide,[16] (ii) make clarifying and technical changes and (iii) provide enhanced readability and transparency for users of DTC's Underwriting Service, as described in the sections below. These would include (1) the modification of applicable text of the Underwriting Guide relating to (a) the section currently titled ''Introduction,'' (b) a section on the closing of an initial issue (''Closing''), (c) MMI Securities, (d) New Issue Eligibility, (e) Older Issues, (f) the Custody Service and (g) packaging inquires; (2) technical changes; and (3) the deletion of a section titled ''Processing Inquiries,'' as described below.

Proposed Changes to the Underwriting Guide

Introduction/Overview Section

The text of the Introduction section of the Underwriting Guide contains four subsections, titled, respectively, ''Overview,'' ''About Underwriting,'' ''Preparing to Use the Products,'' and ''Understanding Relevant Dates.'' Pursuant to the proposed rule change, to enhance readability and improve the overall flow of this section, the (i) title of the section would be changed from ''Introduction'' to ''Overview,'' and (ii) subsection titles mentioned above would be deleted and the four subsections would be consolidated into one section under the new ''Overview'' title.

In addition, the text of the consolidated section would be revised for enhanced clarity of the description of the Underwriting Service and overall readability for Participants.

References to the DTC Participant Terminal System (''PTS'') and other systems that Participants may use in connection with the Underwriting Service would be deleted from this section, because, as proposed and discussed below, other sections of the Underwriting Guide would include information on systems applicable to the aspect of the Underwriting Service covered by the respective sections, obviating the necessity of including such systems-related information in the Overview.

Also, because DTC's Securities eligibility Procedures are primarily contained in the OA, a cross-reference to, and a brief description of, the OA would be added under the Overview section to promote a more comprehensive understanding by readers with respect to the DTC requirements to make Securities eligible for DTC services. Also, to reduce repetition between the Underwriting Guide and the OA, (i) a description of eligibility criteria for Securities would be deleted from this section of the Underwriting Guide and (ii) a table of requirements and relevant dates included in the Understanding Relevant Dates subsection would be deleted and, as discussed below, would be replaced with a cross-reference in the Closing section to the requirements and dates as set forth in Exhibit B [17] of the OA.

Closing

In order to provide for enhanced clarity, readability and flow of the text in the Underwriting Guide with respect to Closing processing, the proposed rule change would (i) revise text describing the function of the DTC Closing area and (ii) consolidate the Closing section into one section from two subsections that are titled ''About the Product'' and ''How the Product Works,'' respectively, and eliminate the respective titles of the subsections. The proposed rule change would also update information for Participants to contact the DTC Closing desk.

Also, as mentioned above, to reduce repetition of the content of the Underwriting Guide versus the OA, a table of requirements and relevant dates included in the Understanding Relevant Dates subsection of the Introduction to the Underwriting Guide would be deleted and would be replaced with a cross-reference to these requirements and dates as set forth in Exhibit B [18] of the OA. The cross-reference would be positioned at the end of the Closing section as the referenced information in the OA includes key dates that must be met in relation to the closing date for an issue. In this regard, the proposed rule change would also remove a reference in the Closing section to deadlines for notifications that must be made to DTC with respect to the processing of the distribution of Securities on closing date, because the applicable timeframes are covered within the Exhibit B to the OA, cited above.

MMI Program

In order to provide enhanced clarity and readability in the Underwriting Guide with respect to Procedures for processing eligibility requests for the MMI Program, the proposed rule change would (i) revise the text of the description of the MMI Program and its eligibility process, (ii) revise information relating to systems used to access MMI Program eligibility services and include a reference to DTC's web-based underwriting application, (iii) remove a descriptive sentence relating to functionality for issuances and deliveries by an Issuing and Paying Agent (''IPA'') in the MMI Program, because it is not relevant to the eligibility process covered by the Underwriting Guide, but rather to issuances and deliveries of MMI Securities that are conducted through DTC's settlement service in accordance with the Rules [19] and the Settlement Service Guide,[20] and (iv) update a

[10] *Id.* at 3.

[11] *Id.* at 1.

[12] The IPO Tracking system allows a Participant that is the lead underwriter of an issue to track certain Deliveries of equity Securities during the period known as the underwriting stabilization period (''Stabilization Period''). *See* Underwriting Guide, *supra* note 6 at 3. The Stabilization Period is the duration of time immediately after the Closing of an issue during which the lead manager of an underwriting may purchase Securities in the open market in order to stop a decline in the price of the Securities. *Id.* at 5.

[13] *See* Custody Service Guide (''Custody Guide''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Custody.pdf,* at 17–18. In 2016, DTC's Custody Service Procedures were revised pursuant to a rule change (''Custody Rule Filing'') that amended the text of the Custody Guide with respect to making Securities eligible for the Custody Service. *See* Securities Exchange Act Release No. 34–79252 (November 7, 2016), 81 FR 79543 (November 14, 2016) (SR–DTC–2016–011). As described more fully below, the proposed change would conform the Custody Service section of the Underwriting Guide for consistency to the provisions set forth in the Custody Rule Filing.

[14] The Security Holder Tracking Service facilitates the ability of an issuer or a third party administrator designated by the issuer to track the number of beneficial holders of an issue. *See* Underwriting Guide, *supra* note 6 at 22–23.

[15] *Supra* note 5.

[16] *Supra* note 13.

[17] *See* OA, *supra* note 5 at 60.

[18] *Id.*

[19] *See* Rule 9(A), Rule 9(B) and Rule 9(C), *supra* note 5.

[20] *See* Settlement Service Guide, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf.*

reference relating to documentation that must be submitted in connection with an MMI Program eligibility request, to remove an outdated reference to an ''Issuer Program Eligibility Form'' signed by the IPA, and instead add a list of required program-level details which would be submitted in place of the form in an online format through the MMI Program web-based application.

New Issue Eligibility

The provisions governing DTC's Securities eligibility processes for New Issues are primarily contained in the Rules and the OA; however the Underwriting Guide does contain text intended to provide information that enhances transparency for Participants regarding applicable Procedures.

In order to provide enhanced clarity in the Underwriting Guide with respect to Procedures for processing eligibility requests for New Issues and promote enhanced consistency of the content of the Underwriting Guide with the provisions of the OA, the proposed rule change would (i) eliminate details in the text describing the New Issue eligibility Procedures and requirements that are repetitive or inconsistent with text contained in the OA, including with respect to (a) the documentation requirements for eligibility requests and (b) types of issues that require additional documentation or special processing, (ii) replace outdated references to the DTC website with a link to the OA for Procedures relating to eligibility and related requirements, and (iii) update references with respect to systems used for access to New Issue-related services to (a) delete references to PTS and PTS functions and (b) add a reference to UW Source, because, in accordance with the OA, UW Source is the system that Participants are required to use to access eligibility services.[21]

Older Issue Eligibility

As mentioned above, the provisions governing DTC's Securities eligibility processes for Older Issues are primarily contained in the Rules and the OA; however the Underwriting Guide also contains information in this regard.

In order to provide consistency of the content of the Underwriting Guide with the provisions of the OA, the proposed rule change would rename the section relating to Older Issues from ''Older Issue Eligibility'' to ''Secondary Market (Older Issue) Eligibility'' for clarity and to reflect that Older Issues are issues that are on the secondary market when they are made eligible at DTC (as opposed to New Issues that are the subject of initial offerings), and insert a link to the OA for Procedures relating to eligibility and related requirements.

Custody Service

In order to provide enhanced clarity and transparency in the Underwriting Guide with respect to Procedures for processing eligibility requests for the Custody Service, the proposed rule change would (i) change the Custody Service section from being a subsection of the Older Issue Eligibility section to its own section of the Underwriting Guide, because the Custody Service, while administered by the same area within DTC that administers eligibility processing for Older Issues and New Issues, is a separate function with different eligibility requirements,[22] (ii) update the text for enhanced readability and consistency of content, including with respect to systems requirements, with applicable Procedures set forth in the Custody Guide,[23] (iii) add a link to the Custody Guide for cross-reference purposes, and (iv) add a link to the DTCC website that provides additional information regarding the Custody Service.

Packaging Inquiries

The proposed rule change would modify the text of the section titled ''Packaging Inquiries'' (i) for readability, (ii) to eliminate content that is repetitive of related content in the OA section named ''Possession and Inspection,'' [24] (iii) to add a link to the OA for additional information and (iv) to provide an updated link to the DTC form of letter of securities possession, which must be executed by a lead underwriter in order for DTC to process a distribution of an issue by book-entry on closing date if a Security certificate has not been provided to DTC within required timeframes.[25]

Processing Inquiries

The proposed rule change would remove the section titled ''Processing Inquiries'' from the Underwriting Guide. This section contains information relating to internal processes for data entry and billing information that is not necessary to be included in a Procedure. In addition, this section refers to special forms for the processing of eligibility of retail certificates of deposit, unit investment trusts and municipal and corporate products, which forms are obsolete because eligibility requests for all Security types, other than Securities in the MMI Program, must be submitted through UW Source.[26]

Other Proposed Changes

The proposed rule change would make technical changes to (i) add to the front of the Underwriting Guide a title page with DTC's name and the title ''Underwriting Service Guide,'' (ii) update (a) the address of DTC's internet site and (b) the copyright date of the Underwriting Guide, (iii) delete outdated contact information within the ''Important Legal Information'' included at the beginning of the Underwriting Guide and (iv) add a link to a user guide relating to the IPO Tracking system that is referenced in the ''IPO Tracking System'' section of the Underwriting Guide.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act [27] requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act because by amending the text of the Underwriting Guide to (i) promote consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, specifically the OA and Custody Guide, (ii) make clarifying changes, (iii) provide enhanced readability and transparency for users of DTC's Underwriting Service, and (iv) make other technical changes, the proposed rule change would provide Participants with an enhanced understanding with respect to the DTC Procedures relating to making Securities eligible for DTC services, as described above. Therefore, by providing Participants with enhanced understanding of DTC eligibility requirements and processing in this regard, and therefore facilitating their ability to request that Securities be made eligible for DTC services, DTC believes that the proposed rule change

[21] *See* OA, *supra* note 5 at 2.

[22] *Compare* Custody Guide, *supra* note 13 at 11–16 (describing the Custody Service function and eligibility requirements), *with* OA, *supra* note 5 at 1–9 (describing DTC's eligibility requirements for Securities to be made eligible for DTC's book-entry services, including New Issues and Older Issues).

[23] *See* Custody Guide, *supra* note 13 at 15–16. In 2016, DTC's Custody Service Procedures were revised pursuant to the Custody Rule Filing, which amended the applicable text of the Custody Guide. *See* Securities Exchange Act Release No. 34–79252 (November 7, 2016), 81 FR 79543 (November 14, 2016) (SR–DTC–2016–011). The proposed change would conform the Custody Service section of the Underwriting Guide for consistency to the provisions set forth in the Custody Rule Filing.

[24] *See* OA, *supra* note 5 at 15.

[25] *See* Underwriting Guide, *supra* note 6 at 18–19.

[26] *See* OA, *supra* note 5 at 1–2.

[27] 15 U.S.C. 78q–1(b)(3)(F).

would promote the prompt and accurate clearance and settlement of securities transactions consistent with the Act.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would merely clarify and provide enhanced transparency with respect to the DTC Underwriting Service by amending the text of the Underwriting Guide (i) for enhanced readability, transparency and flow of content, (ii) to update (a) details on existing processes and (b) contact information, (iii) for enhanced consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, specifically the OA and Custody Guide and (iv) to make other technical changes, as described above, which amendments would not significantly affect the rights and obligations of users of DTC's services, and would not disproportionally impact any users.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [28] and paragraph (f) of Rule 19b–4 thereunder.[29] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2018–004 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–DTC–2018–004. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2018–004 and should be submitted on or before August 22, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16418 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83722; File No. SR–FINRA–2018–023]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to ATS Reporting of Transactions to TRACE in U.S. Treasury Securities

July 26, 2018.

On June 5, 2018, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6730 to require certain alternative trading systems (''ATSs'') that report transactions in U.S. Treasury Securities to the Transaction Reporting and Compliance Engine (''TRACE'') to identify non-FINRA-member subscribers on those transaction reports. The proposed rule change was published for comment in the **Federal Register** on June 13, 2018.[3] The Commission received three comments regarding the proposed rule change.[4]

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 for this filing is July 28, 2018.

The Commission notes that Section 19(b)(5) of the Act requires the Commission to ''consult with and consider the views of the Secretary of

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83393 (June 7, 2018), 83 FR 27643 (''Notice'').

[4] *See* letter to Secretary, Commission, from Stephen John Berger, Managing Director, Government and Regulatory Policy, Citadel, dated July 5, 2018; letter to Robert W. Errett, Deputy Secretary, Commission, from Theodore Bragg, Chief Executive Officer, Execution Access, LLC, dated July 3, 2018; letter to Brent J. Fields, Secretary, Commission, from Tyler Gellasch, Executive Director, The Healthy Markets Association, dated July 5, 2018.

[5] 15 U.S.C. 78s(b)(2).

the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities.'' [6] The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change in order to consider fully the comments received on the proposal and to complete the consultation process required under Section 19(b)(5). Accordingly, pursuant to Section 19(b)(2) of the Act,[7] the Commission designates September 11, 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–FINRA–2018–023).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16426 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83716; File No. SR–NYSEARCA–2018–53]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-Location Services in Connection With a Proposed Transaction With the Chicago Stock Exchange, Inc. Exchange and Its Parent, CHX Holdings, Inc.

July 26, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 16, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') related to co-location services in connection with a proposed transaction (''Transaction'') whereby the Chicago Stock Exchange, Inc. (''CHX'') Exchange and its parent, CHX Holdings, Inc. (''CHX Holdings''), would become indirect subsidiaries of Intercontinental Exchange, Inc. (''ICE''), the Exchange's indirect parent, and affiliates of the Exchange. The Exchange also proposes to make a non-substantive change to the Fee Schedules. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules related to co-location [4] services in connection with the proposed Transaction whereby CHX and its parent, CHX Holdings, would become indirect subsidiaries of ICE, the Exchange's indirect parent, and affiliates of the Exchange.[5] The Exchange also proposes to make a non-substantive change to the Fee Schedules.

The Exchange proposes that the proposed rule change become operative upon the closing of the Transaction.

General Note 4

Pursuant to General Note 4 of the Fee Schedules, when a User [6] purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[7] a User receives (a) the ability to access the trading and execution systems of the Exchange and the Affiliate SROs (''Exchange Systems''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. The majority of the Included Data Products are proprietary feeds of the Exchange and the Affiliate SROs.[8]

Upon the closing of the Transaction, CHX will be an affiliate of both the Exchange and the Affiliate SROs. Consistent with the treatment of the Exchange's and the Affiliate SROs' trading and execution systems and data products, the Exchange proposes to expand the definition of Exchange Systems to incorporate CHX's trading and execution systems, and to add CHX's data products to the table of Included Data Products. In order to make the change, the Exchange proposes to add CHX to the list of trading and execution system providers in the first sentence of the first paragraph and add CHX to the lists of

---

[6] 15 U.S.C. 78s(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] In order to effect the Transaction, a wholly-owned subsidiary of the Exchange's direct parent company, NYSE Group, Inc., would merge with and into CHX Holdings, with CHX Holdings continuing as the surviving corporation. *See* Securities Exchange Act Release Nos. 83635 (July 13, 2018) (SR–CHX–2018–004), and 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004). CHX would also become an affiliate of the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE National, Inc. (''NYSE National'' and, together, the ''Affiliate SROs'').

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Affiliate SROs. *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[7] *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[8] *Id.* Included Data Products are listed in the Fee Schedules under General Note 4.

affiliated entities in the first, third and fourth sentences. The proposed changes to the paragraph are as follows (additions underlined, deletions in brackets):

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, [and] NYSE National, and Chicago Stock Exchange, Inc. (CHX and, together, the Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, [or] NYSE National or CHX, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (i.e. confirmation that an order has been received), receipt of drop copies and trade reporting (i.e. whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American, NYSE Arca, [or] NYSE National, or CHX. NYSE, NYSE American, NYSE Arca, [and] NYSE National and CHX also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

In addition, the Exchange proposes to add CHX to the table of Included Data Products set forth in General Note 4.

In a non-substantive change, the Exchange proposes to make the table of Included Data Products alphabetical by putting the list of NYSE American feeds before NYSE American Options. Such list currently follows NYSE Bonds.

Connectivity to Third Party Systems and Third Party Data Feeds

Users may obtain access to the trading and execution services of third party markets and other content service providers (''Third Party Systems'') of multiple third party markets and other content service providers for a fee.[9] Users connect to Third Party Systems over the IP network. In addition, Users may obtain connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'') for a fee.[10]

Currently, CHX is listed in the tables setting forth the Third Party Systems and Third Party Data Feeds, and Users seeking access to CHX's trading and execution services and data feeds are subject to the applicable fees. Consistent with the proposed changes to General Note 4 described above, because CHX will become an affiliate of the Exchange, the Exchange proposes to delete CHX from such tables.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [11] and (iii) a User would only

[9] *See* Securities Exchange Act Release 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89).

[10] *See id.*

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the

incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange, one or more of its Affiliate SROs.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because upon the closing of the Transaction, CHX will be an affiliate of both the Exchange and the Affiliate SROs. Expanding the definition of Exchange Systems to incorporate CHX's trading and execution systems, adding CHX's data products to the table of Included Data Products, and removing CHX from the lists of Third Party Systems and Third Party Data Feeds would make the Fee Schedule treatment of CHX trading and execution systems and data products consistent with the treatment of the trading and execution systems and data products of the Exchange and the Affiliate SROs.

Further, the Exchange believes that revising General Note 4 would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the CHX trading and execution systems and connectivity to CHX data as to those of the Exchange and the Affiliate SROs and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. In addition, as with Exchange and Affiliate SRO access and connectivity, a User would not be required to use any of its bandwidth to access the CHX trading and execution system or connect to CHX data unless it wished to do so. A User only receives access to Exchange Systems and connectivity to Included Data Products that it selects, and a User can change such access or connectivity it receives at any time, subject to authorization from the relevant data provider, the Exchange, or relevant Affiliate SRO.

The Exchange believes that the non-substantive change to put the table of Included Data Products into alphabetical order would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules and make it easier for market participants to find Included Data Products in the table.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, because the change would result in CHX, which will be an affiliate of the Exchange and the Affiliate SROs, being treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. The proposed change would result in reduced fees for Users that have access or connectivity to CHX, as it would no longer be a Third Party System or Third Party Data Feed.

The Exchange believes that the proposed non-substantive change to put the table of Included Data Products into alphabetical order would be reasonable because the change would have no impact on pricing or services offered. Rather, the change would alleviate possible market participant confusion by making it easier to find Included Data Products in the table.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would result in CHX, which will be an affiliate of the Exchange and Affiliate SROs, being treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. As a result of the proposed changes, all Users that voluntarily select to access the LCN or IP network would receive the same access to the CHX trading and execution systems and connectivity to CHX data as to those of the Exchange and the Affiliate SROs and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. A User would not be required to use any of its bandwidth to access the CHX trading and execution system or connect to CHX data unless it wishes to do so. The proposed change would result in reduced fees for Users that have access or connectivity to CHX, as it would no longer be a Third Party System or Third Party Data Feed.

The Exchange believes that the proposed non-substantive change to put the table of Included Data Products into alphabetical order would not impose any burden on competition that is not

data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* 78 FR 50459, *supra* note 6, at 50459. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2018–35, SR–NYSEAMER–2018–38, and SR–NYSENAT–2018–17.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(8).

necessary or appropriate in furtherance of the purposes of the Act because the change would have no impact on pricing or the services offered. Rather, the change would alleviate possible market participant confusion by making it easier to find Included Data Products in the table.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the requested wavier would ensure that immediately upon the closing of the Transaction CHX would be treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. The waiver would allow the Exchange to expand the definition of Exchange Systems to incorporate CHX's trading and execution systems, add CHX's data products to the table of Included Data Products, and remove CHX from the lists of Third Party Systems and Third Party Data Feeds immediately upon the closing of the Transaction. In addition, it would implement the reduced fee for Users that currently have access or connectivity to CHX immediately upon Closing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2018–53 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEARCA–2018–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2018–53 and should be submitted on or before August 22, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16421 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83717; File No. SR–NYSE–2018–35]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List Related to Co-Location Services in Connection With a Proposed Transaction With the Chicago Stock Exchange, Inc. Exchange and Its Parent, CHX Holdings, Inc.

July 26, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934

[1] 15 U.S.C. 78s(b)(1).

(''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 16, 2018, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List related to co-location services in connection with a proposed transaction (''Transaction'') whereby the Chicago Stock Exchange, Inc. (''CHX'') Exchange and its parent, CHX Holdings, Inc. (''CHX Holdings''), would become indirect subsidiaries of Intercontinental Exchange, Inc. (''ICE''), the Exchange's indirect parent, and affiliates of the Exchange. The Exchange also proposes to make a non-substantive change to the Price List. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List related to co-location[4] services in connection with the proposed Transaction whereby CHX and its parent, CHX Holdings, would become indirect subsidiaries of ICE, the Exchange's indirect parent, and affiliates of the Exchange.[5] The Exchange also proposes to make a non-substantive change to the Price List.

The Exchange proposes that the proposed rule change become operative upon the closing of the Transaction.

General Note 4

Pursuant to General Note 4 of the Price List, when a User[6] purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[7] a User receives (a) the ability to access the trading and execution systems of the Exchange and the Affiliate SROs (''Exchange Systems''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. The majority of the Included Data Products are proprietary feeds of the Exchange and the Affiliate SROs.[8]

Upon the closing of the Transaction, CHX will be an affiliate of both the Exchange and the Affiliate SROs. Consistent with the treatment of the Exchange's and the Affiliate SROs' trading and execution systems and data products, the Exchange proposes to expand the definition of Exchange Systems to incorporate CHX's trading and execution systems, and to add CHX's data products to the table of Included Data Products. In order to make the change, the Exchange proposes to add CHX to the list of trading and execution system providers in the first sentence of the first paragraph and add CHX to the lists of affiliated entities in the first, third and fourth sentences. The proposed changes to the paragraph are as follows (additions underlined, deletions in brackets):

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] In order to effect the Transaction, a wholly-owned subsidiary of the Exchange's direct parent company, NYSE Group, Inc., would merge with and into CHX Holdings, with CHX Holdings continuing as the surviving corporation. *See* Securities Exchange Act Release Nos. 83635 (July 13, 2018) (SR–CHX–2018–004), and 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004). CHX would also become an affiliate of the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and, together, the ''Affiliate SROs'').

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Affiliate SROs. *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[7] *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92).

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, [and] NYSE National, and Chicago Stock Exchange, Inc. (CHX and, together, the Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, [or] NYSE National or CHX, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (i.e. confirmation that an order has been received), receipt of drop copies and trade reporting (i.e. whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American, NYSE Arca, [or] NYSE National, or CHX. NYSE, NYSE American, NYSE Arca, [and] NYSE National and CHX also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

BILLING CODE 8011–01–C

In addition, the Exchange proposes to add CHX to the table of Included Data Products set forth in General Note 4.

In a non-substantive change, the Exchange proposes to make the table of Included Data Products alphabetical by putting the list of NYSE American feeds before NYSE American Options. Such list currently follows NYSE Bonds.

Connectivity to Third Party Systems and Third Party Data Feeds

Users may obtain access to the trading and execution services of third party markets and other content service providers (''Third Party Systems'') of multiple third party markets and other content service providers for a fee.[9] Users connect to Third Party Systems over the IP network. In addition, Users may obtain connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'') for a fee.[10]

Currently, CHX is listed in the tables setting forth the Third Party Systems and Third Party Data Feeds, and Users seeking access to CHX's trading and execution services and data feeds are subject to the applicable fees. Consistent with the proposed changes to General Note 4 described above, because CHX will become an affiliate of the Exchange, the Exchange proposes to delete CHX from such tables.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange, one or more of its Affiliate SROs.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or

[8] *Id.* Included Data Products are listed in the Price List under General Note 4.

[9] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR–NYSE–2016–45).

[10] *See id.*

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because upon the closing of the Transaction, CHX will be an affiliate of both the Exchange and the Affiliate SROs. Expanding the definition of Exchange Systems to incorporate CHX's trading and execution systems, adding CHX's data products to the table of Included Data Products, and removing CHX from the lists of Third Party Systems and Third Party Data Feeds would make the Price List treatment of CHX trading and execution systems and data products consistent with the treatment of the trading and execution systems and data products of the Exchange and the Affiliate SROs.

Further, the Exchange believes that revising General Note 4 would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the CHX trading and execution systems and connectivity to CHX data as to those of the Exchange and the Affiliate SROs and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. In addition, as with Exchange and Affiliate SRO access and connectivity, a User would not be required to use any of its bandwidth to access the CHX trading and execution system or connect to CHX data unless it wished to do so. A User only receives access to Exchange Systems and connectivity to Included Data Products that it selects, and a User can change such access or connectivity it receives at any time, subject to authorization from the relevant data provider, the Exchange, or relevant Affiliate SRO.

The Exchange believes that the non-substantive change to put the table of Included Data Products into alphabetical order would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules and make it easier for market participants to find Included Data Products in the table.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, because the change would result in CHX, which will be an affiliate of the Exchange and the Affiliate SROs, being treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. The proposed change would result in reduced fees for Users that have access or connectivity to CHX, as it would no longer be a Third Party System or Third Party Data Feed.

The Exchange believes that the proposed non-substantive change to put the table of Included Data Products into alphabetical order would be reasonable because the change would have no impact on pricing or services offered. Rather, the change would alleviate possible market participant confusion by making it easier to find Included Data Products in the table.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would result in CHX, which will be an affiliate of the Exchange and Affiliate SROs, being treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. As a result of the proposed changes, all Users that voluntarily select to access the LCN or IP network would receive the same access to the CHX trading and execution systems and connectivity to CHX data as to those of the Exchange and the Affiliate SROs and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. A User would not be required to use any of its bandwidth to access the CHX trading and execution system or connect to CHX data unless it wishes to do so. The proposed change would result in reduced fees for Users that have access or connectivity to CHX, as it would no longer be a Third Party System or Third Party Data Feed.

The Exchange believes that the proposed non-substantive change to put the table of Included Data Products into alphabetical order would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would have no impact on pricing or the services offered. Rather, the change would alleviate possible market participant confusion by making it easier to find Included Data Products in the table.

[12] *See* 78 FR 51765, *supra* note 6, at 51766. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2018–38, SR–NYSEArca–2018–53, and SR–NYSENAT–2018–17.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the requested wavier would ensure that immediately upon the closing of the Transaction CHX would be treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. The waiver would allow the Exchange to expand the definition of Exchange Systems to incorporate CHX's trading and execution systems, add CHX's data products to the table of Included Data Products, and remove CHX from the lists of Third Party Systems and Third Party Data Feeds immediately upon the closing of the Transaction. In addition, it would implement the reduced fee for Users that currently have access or connectivity to CHX immediately upon Closing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2018–35 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2018–35. 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–NYSE–2018–35 and should be submitted on or before August 22, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16422 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83715; File No. SR–NYSENAT–2018–17]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates Related to Co-Location Services in Connection With a Proposed Transaction With the Chicago Stock Exchange, Inc. Exchange and Its Parent, CHX Holdings, Inc.

July 26, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 16, 2018, NYSE National, Inc. (''Exchange'' or ''NYSE National'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (the ''Price List'') related to co-location services in connection with a proposed transaction (''Transaction'') whereby the Chicago Stock Exchange, Inc. (''CHX'') Exchange and its parent, CHX Holdings, Inc. (''CHX Holdings''), would become indirect subsidiaries of Intercontinental Exchange, Inc. (''ICE''), the Exchange's indirect parent, and affiliates of the Exchange. The Exchange also proposes to make a non-substantive change to the Price List. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List related to co-location [4] services in connection with the proposed Transaction whereby CHX and its parent, CHX Holdings, would become indirect subsidiaries of ICE, the Exchange's indirect parent, and affiliates of the Exchange.[5] The Exchange also proposes to make a non-substantive change to the Price List.

The Exchange proposes that the proposed rule change become operative upon the closing of the Transaction.

General Note 4

Pursuant to General Note 4 of the Price List, when a User [6] purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[7] a User receives (a) the ability to access the trading and execution systems of the Exchange and the Affiliate SROs (''Exchange Systems''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. The majority of the Included Data Products are proprietary feeds of the Exchange and the Affiliate SROs.[8]

Upon the closing of the Transaction, CHX will be an affiliate of both the Exchange and the Affiliate SROs. Consistent with the treatment of the Exchange's and the Affiliate SROs' trading and execution systems and data products, the Exchange proposes to expand the definition of Exchange Systems to incorporate CHX's trading and execution systems, and to add CHX's data products to the table of Included Data Products. In order to make the change, the Exchange proposes to add CHX to the list of trading and execution system providers in the first sentence of the first paragraph and add CHX to the lists of affiliated entities in the first, third and fourth sentences. The proposed changes to the paragraph are as follows (additions underlined, deletions in brackets):

BILLING CODE 8011–01–P

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (''NYSE National Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] In order to effect the Transaction, a wholly-owned subsidiary of the Exchange's direct parent company, NYSE Group, Inc., would merge with and into CHX Holdings, with CHX Holdings continuing as the surviving corporation. *See* Securities Exchange Act Release Nos. 83635 (July 13, 2018) (SR–CHX–2018–004), and 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004). CHX would also become an affiliate of the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE Arca, Inc. (''NYSE Arca'' and, together, the ''Affiliate SROs'').

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* NYSE National Filing, *supra* note 4, note 9. As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Affiliate SROs. *See* NYSE National Filing, *supra* note 4, at 26314.

[7] *See* NYSE National Filing, *supra* note 4, at 26315–26315.

[8] *Id.* Included Data Products are listed in the Price List under General Note 4.

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, [and] NYSE National, and Chicago Stock Exchange, Inc. (CHX and, together, the Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, [or] NYSE National or CHX, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (i.e. confirmation that an order has been received), receipt of drop copies and trade reporting (i.e. whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American, NYSE Arca, [or] NYSE National, or CHX. NYSE, NYSE American, NYSE Arca, [and] NYSE National and CHX also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

BILLING CODE 8011–01–C

In addition, the Exchange proposes to add CHX to the table of Included Data Products set forth in General Note 4.

In a non-substantive change, the Exchange proposes to make the table of Included Data Products alphabetical by putting the list of NYSE American feeds before NYSE American Options. Such list currently follows NYSE Bonds.

Connectivity to Third Party Systems and Third Party Data Feeds

Users may obtain access to the trading and execution services of third party markets and other content service providers (''Third Party Systems'') of multiple third party markets and other content service providers for a fee.[9] Users connect to Third Party Systems over the IP network. In addition, Users may obtain connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'') for a fee.[10]

Currently, CHX is listed in the tables setting forth the Third Party Systems and Third Party Data Feeds, and Users seeking access to CHX's trading and execution services and data feeds are subject to the applicable fees. Consistent with the proposed changes to General Note 4 described above, because CHX will become an affiliate of the Exchange, the Exchange proposes to delete CHX from such tables.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange, one or more of its Affiliate SROs.[12]

[9] *See* NYSE National Filing, *supra* note 4, at 26322.

[10] *Id.*

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* NYSE National Filing, *supra* note 4, at 26315. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2018–35, SR–NYSEAMER–2018–38, and SR–NYSEArca–2018–53.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because upon the closing of the Transaction, CHX will be an affiliate of both the Exchange and the Affiliate SROs. Expanding the definition of Exchange Systems to incorporate CHX's trading and execution systems, adding CHX's data products to the table of Included Data Products, and removing CHX from the lists of Third Party Systems and Third Party Data Feeds would make the Price List treatment of CHX trading and execution systems and data products consistent with the treatment of the trading and execution systems and data products of the Exchange and the Affiliate SROs.

Further, the Exchange believes that revising General Note 4 would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the CHX trading and execution systems and connectivity to CHX data as to those of the Exchange and the Affiliate SROs and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. In addition, as with Exchange and Affiliate SRO access and connectivity, a User would not be required to use any of its bandwidth to access the CHX trading and execution system or connect to CHX data unless it wished to do so. A User only receives access to Exchange Systems and connectivity to Included Data Products that it selects, and a User can change such access or connectivity it receives at any time, subject to authorization from the relevant data provider, the Exchange, or relevant Affiliate SRO.

The Exchange believes that the non-substantive change to put the table of Included Data Products into alphabetical order would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules and make it easier for market participants to find Included Data Products in the table.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, because the change would result in CHX, which will be an affiliate of the Exchange and the Affiliate SROs, being treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. The proposed change would result in reduced fees for Users that have access or connectivity to CHX, as it would no longer be a Third Party System or Third Party Data Feed.

The Exchange believes that the proposed non-substantive change to put the table of Included Data Products into alphabetical order would be reasonable because the change would have no impact on pricing or services offered. Rather, the change would alleviate possible market participant confusion by making it easier to find Included Data Products in the table.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would result in CHX, which will be an affiliate of the Exchange and Affiliate SROs, being treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. As a result of the proposed changes, all Users that voluntarily select to access the LCN or IP network would receive the same access to the CHX trading and execution systems and connectivity to CHX data as to those of the Exchange and the Affiliate SROs and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. A User would not be required to use any of its bandwidth to access the CHX trading and execution system or connect to CHX data unless it wishes to do so. The proposed change would result in reduced fees for Users that have access or connectivity to CHX, as it would no longer be a Third Party System or Third Party Data Feed.

The Exchange believes that the proposed non-substantive change to put the table of Included Data Products into alphabetical order would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would have no impact on pricing or the services offered. Rather, the change would alleviate possible market participant confusion by making it easier to find Included Data Products in the table.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the requested wavier would ensure that immediately upon the closing of the Transaction CHX would be treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. The waiver would allow the Exchange to expand the definition of Exchange Systems to incorporate CHX's trading and execution systems, add CHX's data products to the table of Included Data Products, and remove CHX from the lists of Third Party Systems and Third Party Data Feeds immediately upon the closing of the Transaction. In addition, it would implement the reduced fee for Users that currently have access or connectivity to CHX immediately upon Closing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2018–17 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–NYSENAT–2018–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet 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–NYSENAT–2018–17 and should be submitted on or before August 22, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16420 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83718; File No. SR–NYSEAMER–2018–38]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-Location Services in Connection With a Proposed Transaction With the Chicago Stock Exchange, Inc. Exchange and Its Parent, CHX Holdings, Inc.

July 26, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 16, 2018, NYSE American LLC (''Exchange'' or ''NYSE American'') 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule'') related to co-location services in connection with a proposed transaction (''Transaction'') whereby the Chicago Stock Exchange, Inc. (''CHX'') Exchange and its parent, CHX Holdings, Inc. (''CHX Holdings''), would become indirect subsidiaries of Intercontinental Exchange, Inc. (''ICE''), the Exchange's indirect parent, and affiliates of the Exchange. The Exchange also proposes to make a non-substantive change to the Price List and Fee Schedule. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List and Fee Schedule related to co-location [4] services in connection with the proposed Transaction whereby CHX and its parent, CHX Holdings, would become indirect subsidiaries of ICE, the Exchange's indirect parent, and affiliates of the Exchange.[5] The Exchange also proposes to make a non-substantive change to the Price List and Fee Schedule.

The Exchange proposes that the proposed rule change become operative upon the closing of the Transaction.

General Note 4

Pursuant to General Note 4 of the Price List and Fee Schedule, when a User [6] purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[7] a User receives (a) the ability to access the trading and execution systems of the Exchange and the Affiliate SROs (''Exchange Systems''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. The majority of the Included Data Products are proprietary feeds of the Exchange and the Affiliate SROs.[8]

Upon the closing of the Transaction, CHX will be an affiliate of both the Exchange and the Affiliate SROs. Consistent with the treatment of the Exchange's and the Affiliate SROs' trading and execution systems and data products, the Exchange proposes to expand the definition of Exchange Systems to incorporate CHX's trading and execution systems, and to add CHX's data products to the table of Included Data Products. In order to make the change, the Exchange proposes to add CHX to the list of trading and execution system providers in the first sentence of the first paragraph and add CHX to the lists of affiliated entities in the first, third and fourth sentences. The proposed changes to the paragraph are as follows (additions *italicized*, deletions in brackets):

> When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, [and] NYSE National*, and Chicago Stock Exchange, Inc.* (*CHX and, together, the* Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca [or] NYSE National *or CHX,* as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (*i.e.,* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.,* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American, NYSE Arca, [or] NYSE National*, or CHX.* NYSE, NYSE American, NYSE Arca, [and] NYSE National *and CHX* also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

In addition, the Exchange proposes to add CHX to the table of Included Data Products set forth in General Note 4.

In a non-substantive change, the Exchange proposes to make the table of Included Data Products alphabetical by putting the list of NYSE American feeds before NYSE American Options. Such list currently follows NYSE Bonds.

Connectivity to Third Party Systems and Third Party Data Feeds

Users may obtain access to the trading and execution services of third party markets and other content service providers (''Third Party Systems'') of multiple third party markets and other content service providers for a fee.[9] Users connect to Third Party Systems over the IP network. In addition, Users may obtain connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'') for a fee.[10]

Currently, CHX is listed in the tables setting forth the Third Party Systems and Third Party Data Feeds, and Users seeking access to CHX's trading and execution services and data feeds are subject to the applicable fees. Consistent with the proposed changes to General Note 4 described above, because CHX will become an affiliate of the Exchange, the Exchange proposes to delete CHX from such tables.

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] In order to effect the Transaction, a wholly-owned subsidiary of the Exchange's direct parent company, NYSE Group, Inc., would merge with and into CHX Holdings, with CHX Holdings continuing as the surviving corporation. *See* Securities Exchange Act Release Nos. 83635 (July 13, 2018) (SR–CHX–2018–004), and 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004). CHX would also become an affiliate to the Exchange's affiliates the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and, together, the ''Affiliate SROs'').

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Affiliate SROs. *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[7] *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126).

[8] *Id.* Included Data Products are listed in the Price List and Fee Schedule under General Note 4.

[9] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63).

[10] *See id.*

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange, one or more of its Affiliate SROs.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because upon the closing of the Transaction, CHX will be an affiliate of both the Exchange and the Affiliate SROs. Expanding the definition of Exchange Systems to incorporate CHX's trading and execution systems, adding CHX's data products to the table of Included Data Products, and removing CHX from the lists of Third Party Systems and Third Party Data Feeds would make the Price List and Fee Schedule treatment of CHX trading and execution systems and data products consistent with the treatment of the trading and execution systems and data products of the Exchange and the Affiliate SROs.

Further, the Exchange believes that revising General Note 4 would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the CHX trading and execution systems and connectivity to CHX data as to those of the Exchange and the Affiliate SROs and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. In addition, as with Exchange and Affiliate SRO access and connectivity, a User would not be required to use any of its bandwidth to access the CHX trading and execution system or connect to CHX data unless it wished to do so. A User only receives access to Exchange Systems and connectivity to Included Data Products that it selects, and a User can change such access or connectivity it receives at any time, subject to authorization from the relevant data provider, the Exchange, or relevant Affiliate SRO.

The Exchange believes that the non-substantive change to put the table of Included Data Products into alphabetical order would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules and make it easier for market participants to find Included Data Products in the table.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers, because the change would result in CHX, which will be an affiliate of the Exchange and the Affiliate SROs, being treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. The proposed change would result in reduced fees for Users that have access or connectivity to CHX, as it would no longer be a Third Party System or Third Party Data Feed.

The Exchange believes that the proposed non-substantive change to put the table of Included Data Products into alphabetical order would be reasonable because the change would have no impact on pricing or services offered. Rather, the change would alleviate possible market participant confusion by making it easier to find Included Data Products in the table.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would result in CHX, which will be an affiliate of the Exchange and Affiliate SROs, being treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. As a result of the proposed changes, all Users that voluntarily select to access

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* 78 FR 50471, *supra* note 6, at 50471. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2018–35, SR–NYSEArca–2018–53, and SR–NYSENAT–2018–17.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(8).

the LCN or IP network would receive the same access to the CHX trading and execution systems and connectivity to CHX data as to those of the Exchange and the Affiliate SROs and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. A User would not be required to use any of its bandwidth to access the CHX trading and execution system or connect to CHX data unless it wishes to do so. The proposed change would result in reduced fees for Users that have access or connectivity to CHX, as it would no longer be a Third Party System or Third Party Data Feed.

The Exchange believes that the proposed non-substantive change to put the table of Included Data Products into alphabetical order would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would have no impact on pricing or the services offered. Rather, the change would alleviate possible market participant confusion by making it easier to find Included Data Products in the table.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder. [19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the requested wavier would ensure that immediately upon the closing of the Transaction CHX would be treated on the same terms and in the same manner as the Exchange and the Affiliate SROs with respect to their trading and execution systems and data products. The waiver would allow the Exchange to expand the definition of Exchange Systems to incorporate CHX's trading and execution systems, add CHX's data products to the table of Included Data Products, and remove CHX from the lists of Third Party Systems and Third Party Data Feeds immediately upon the closing of the Transaction. In addition, it would implement the reduced fee for Users that currently have access or connectivity to CHX immediately upon Closing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2018–38 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–NYSEAMER–2018–38. 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–NYSEAMER–2018–38 and should be submitted on or before August 22, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16423 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83720; File No. SR–NYSEArca–2018–43]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Investments of the First Trust TCW Unconstrained Plus Bond ETF

July 26, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 11, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain changes regarding investments of the First Trust TCW Unconstrained Plus Bond ETF, shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E (''Managed Fund Shares''). The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain changes, described below under ''Application of Generic Listing Requirements'', regarding investments of the First Trust TCW Unconstrained Plus Bond ETF (''Fund''), shares (''Shares'') of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares [4] on the Exchange. Shares of the Fund commenced trading on the Exchange on June 5, 2018 in accordance with the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600–E.

The Shares are offered by First Trust Exchange-Traded Fund VIII (the ''Trust''), which is registered with the Commission as an open-end management investment company.[5] The Fund is a series of the Trust.

First Trust Advisors L.P. is the investment adviser (''First Trust'' or ''Adviser'') to the Fund. TCW Investment Management Company LLC (''TCW'' or the ''Sub-Adviser''), serves as the Fund's investment sub-adviser. First Trust Portfolios L.P. is the distributor (''Distributor'') for the Fund's Shares. The Bank of New York Mellon acts as the administrator, custodian and transfer agent (''Custodian'' or ''Transfer Agent'') for the Fund.

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to relevant personnel and any broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On May 29, 2018, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–210186 and 811–23147) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

public information regarding such portfolio.

First Trust TCW Unconstrained Plus Bond ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund is to seek to maximize long-term total return. Under normal market conditions,[7] the Fund intends to invest at least 80% of its net assets (including investment borrowings) in a portfolio of ''Fixed Income Securities'' (described below).

In managing the Fund's portfolio, TCW intends to employ a flexible approach that allocates the Fund's investments across a range of global investment opportunities and actively manage exposure to interest rates, credit sectors and currencies. TCW seeks to utilize independent, bottom-up research to identify securities that are undervalued and that offer a superior risk/return profile. Pursuant to this investment strategy, the Fund may invest in the following Fixed Income Securities, which may be represented by derivatives relating to such securities, as discussed below:

- Securities issued or guaranteed by the U.S. government or its agencies, instrumentalities or U.S. government-sponsored entities;
- Treasury Inflation Protected Securities (''TIPS'');
- agency and non-agency residential mortgage-backed securities (''RMBS''); agency and non-agency commercial mortgage-backed securities (''CMBS''); agency and non-agency asset-backed securities (''ABS'');[8]
- domestic corporate bonds;
- Fixed Income Securities issued by non-U.S. corporations and non-U.S. governments;
- bank loans, including first lien senior secured floating rate bank loans (''Senior Loans''), secured and unsecured loans, second lien or more junior loans, and bridge loans;
- fixed income convertible securities;
- fixed income preferred securities;
- municipal bonds;
- collateralized loan obligations (''CLOs''); and
- Rule 144A securities.

The Fund may invest in agency RMBS and CMBS by investing in to-be-announced transactions (''TBA Transactions'').

The Fund may hold cash and cash equivalents.[9] In addition, the Fund may hold the following short-term instruments with maturities of three months or more: Certificates of deposit; bankers' acceptances; repurchase agreements and reverse repurchase agreements; bank time deposits; and commercial paper.

The Fund may enter into short sales of any securities in which the Fund may invest.

The Fund may utilize exchange-listed and over-the-counter (''OTC'') traded derivatives instruments for duration/yield curve management and/or hedging purposes, for risk management purposes or as part of its investment strategies. The Fund will use derivative instruments primarily to hedge interest rate risk, actively manage interest rate exposure, hedge foreign currency risk and actively manage foreign currency exposure. The Fund may also use derivative instruments to enhance returns, as a substitute for, or to gain exposure to, a position in an underlying asset, to reduce transaction costs, to maintain full market exposure, to manage cash flows or to preserve capital. Derivatives may also be used to hedge risks associated with the Fund's other portfolio investments. Derivatives that the Fund may enter into are the following: Futures on interest rates, currencies, fixed income securities and fixed income indices; exchange-traded and OTC options on interest rates, currencies, fixed income securities and fixed income indices; swap agreements on interest rates, currencies, fixed income securities and fixed income indices; credit default swaps (''CDX''); and currency forward contracts.

Other Investments

While the Fund, under normal market conditions, invests at least 80% of its net assets in the Principal Investments described above, the Fund may invest its remaining assets in the following ''Non-Principal Investments.''

The Fund may invest in exchange-traded common stock, exchange-traded preferred stock, and exchange-traded real estate investment trusts (''REITs'').

The Fund may invest in the securities of other investment companies registered under the 1940 Act, including money market funds, exchange-traded funds (''ETFs''), open-end funds (other than money market funds and other ETFs), and U.S. exchange-traded closed-end funds.[10]

The Fund may hold exchange-traded notes (''ETNs'').[11]

The Fund may hold exchange-traded or OTC ''Work Out Securities.''[12]

The Fund may hold exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities.

Investment Restrictions

The Fund may invest up to 50% of its total assets (calculated as the aggregate gross notional value) in Private ABS/MBS, provided that the Fund may not invest more than 30% of its total assets (calculated as the aggregate gross notional value) in non-agency RMBS.

The Exchange proposes that up to 25% of the Fund's assets may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio. For purposes of these percentage limitations on OTC derivatives, the weight of such OTC derivatives will be calculated as the aggregate gross notional value of such OTC derivatives.

The Fund's holdings of bank loans will not exceed 15% of the Fund's total assets, and the Fund's holdings of bank

[7] The term ''normal market conditions'' [sic] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to market, political or economic factors and in other extraordinary circumstances.

[8] Non-agency RMBS, CMBS and ABS are referred to collectively herein as ''Private ABS/MBS.''

[9] For purposes of this filing, cash equivalents are the short-term instruments with maturities of less than 3 months enumerated in Commentary .01(c) to Rule 8.600–E.

[10] For purposes of this filing, the term ''ETFs'' includes Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) ETFs.

[11] ETNs include Index-Linked Securities (as described in NYSE Arca Rule 5.2–E(j)(6)). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs (*e.g.,* 2X or −3X).

[12] For purposes of this filing, Work Out Securities include U.S. or foreign equity securities of any type acquired in connection with restructurings related to issuers of Fixed Income Securities held by the Fund. Work Out Securities are generally traded OTC, but may be traded on a U.S. or foreign exchange .

loans other than Senior Loans will not exceed 5% of the Fund's total assets.

The Fund's holdings in fixed income convertible securities and in equity securities issued upon conversion of such convertible securities will not exceed 10% of the Fund's total assets.

The Fund's holdings in Work Out Securities will not exceed 5% of the Fund's total assets.

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or − 3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[13]

Use of Derivatives by the Fund

The Fund may invest in the types of derivatives described in the ''Principal Investments'' section above for the purposes described in that section. Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board''). In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives. The Adviser and the Sub-Adviser understand that market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser and the Sub-Adviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value (''NAV''), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser and Sub-Adviser do not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV[14] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units generally will consist of 50,000 Shares. The size of a Creation Unit is subject to change. As described in the Registration Statement, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket'').[15] In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and the Transfer Agent with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Transfer Agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(a)(1), (a)(2), (b)(5), and (e), as described below.

The Fund will not comply with the requirements set forth in Commentary .01(a)(1)[16] and (a)(2)[17] to NYSE Arca

[13] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[14] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m., Eastern Time (''E.T.''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

[15] It is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, the Fund may issue and redeem Creation Units on an in-kind (or partially in-kind) (or partially cash) basis.

[16] Commentary .01(a)(1) to NYSE Arca Rule 8.600–E provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities

Rule 8.600–E with respect to the Fund's investments in equity securities.[18] Instead, the Exchange proposes that (i) the Fund's investments in equity securities will meet the requirements of Commentary .01(a) with the exception of Commentary .01(a)(1)(C) and .01(a)(1)(D) (with respect to U.S. Component Stocks) and Commentary .01(a)(2)(C) and .01(a)(2)(D) (with respect to Non-U.S. Component Stocks). Any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, exchange-traded equity securities issued upon conversion of fixed income convertible securities, exchange-traded Work Out Securities and U.S. exchange-traded closed-end funds would provide for enhanced diversification of the Fund's portfolio and, in any case, would be non-principal Fund investments and would not exceed 20% of the Fund's net assets in the aggregate. With respect to any Fund holdings of exchange-traded equity securities issued upon conversion of fixed income convertible securities and exchange-traded Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions. The Adviser and Sub-Adviser represent that, under these circumstances, application of the weighting requirements of Commentary .01(a)(1)(C) and Commentary .01(a)(2)(C) and the minimum number of components requirements of Commentary .01(a)(1)(D) and Commentary .01(a)(2)(D) would impose an unnecessary burden on the Fund's ability to hold such equity securities.

The Fund will not comply with the requirement in Commentary .01(b)(5) to Rule 8.600–E that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the fixed income portion of the Fund's portfolio.[19] Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in Private ABS/MBS (calculated as the aggregate gross notional value), provided that the Fund may not invest more than 30% of its total assets in non-agency RMBS (calculated as the aggregate gross notional value).

The Adviser and Sub-Adviser represent that the non-agency RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the CMBS and ABS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Fund's portfolio will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E.[20] Specifically, the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Sub-Adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.[21]

As noted above, the Fund may hold equity securities that are Work Out

Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and

(F) American Depositary Receipts (''ADRs'') in a portfolio may be exchange-traded or non- exchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

[17] Commentary .01(a)(2) to NYSE Arca Rule 8.600–E provides that the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million;

(B) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(E) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

[18] For purposes of these exceptions, investments in equity securities that are OTC Work Out Securities, OTC equity securities issued upon conversion of fixed income convertible securities, or non-exchange-traded securities of other open-end investment companies (*e.g.,* mutual funds) are excluded and are discussed further below.

[19] Commentary .01(b)(5) to NYSE Arca Rule 8.600–E provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

[20] Commentary .01(e) to NYSE Arca Rule 8.600–E provides that the portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

[21] The Commission has previously approved an exception from requirements set forth in Commentary .01(e) relating to investments in OTC derivatives similar to those proposed with respect to the Fund in Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR–NYSEArca–2017–09) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600).

Securities, which generally are traded OTC (but that may be traded on a U.S. or foreign exchange), exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities, and non-exchange-traded securities of other open-end investment company securities (*e.g.,* mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities,[22] and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) and Commentary .01(a)(2) (A) through (E) to Rule 8.600–E. Investments in non-exchange-traded securities of open-end investment company securities will not be principal investments of the Fund.[23] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. With respect to any Fund holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in OTC equity securities issued upon conversion of fixed income convertible securities or OTC Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

With respect to investments in non-exchange-traded investment company securities, because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).[24]

The Exchange notes that Commentary .01(A) through (D) to Rule 8.600–E exclude application of those provisions to certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E).[25] In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund's investments in such securities.[26] Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

The Exchange notes that, other than Commentary .01(a)(1), (a)(2), (b)(5), and (e) to Rule 8.600–E, as described above, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

Availability of Information

The Fund's website (*www.ftportfolios.com*) will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative

[22] Commentary .01 (a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6).

[23] For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

[24] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities. *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

[25] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E (j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3 in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (''2008 Approval Order''). *See also,* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares). *See also,* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf.*

[26] *See* Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[27] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.[28]

On a daily basis, the Fund will disclose the information required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Forms N–CSR and Forms N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Securities will be available from major market data vendors. Price information relating to OTC options, forwards and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Intraday and other price information for the Fixed Income Securities in which the Fund will invest will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, and Private ABS/MBS, to the extent transactions in such securities are reported to TRACE.[29] Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system. Non-exchange-traded open-end investment company securities are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities and cash equivalents generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

Information regarding market price and trading volume of the Shares, ETFs, ETNs, common stocks, preferred stocks, REITs, equity securities issued upon conversion of fixed income convertible securities, Work-Out Securities and closed-end funds will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work-Out Securities will be available via the Consolidated Tape Association (''CTA'') high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation (''OCC'') are available via the Options Price Reporting Authority (''OPRA''). In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[30] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Fund's Shares also will be subject to Rule 8.600–E(d)(2)(D) (''Trading Halts'').

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With the exception of the requirements of Commentary .01(a)(1), (a)(2), (b)(5), and (e) to Rule 8.600–E as

[27] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[28] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[29] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For Fixed Income Securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

[30] *See* NYSE Arca Rule 7.12–E.

described above in ''Application of Generic Listing Requirements,'' the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. Consistent with NYSE Arca Rule 8.600–E(d)(2)(B)(ii), the Adviser and Sub-Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio.

The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 [31] under the Act, as provided by NYSE Arca Rule 5.3–E. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. The Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[32]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities, certain Work-Out Securities with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.[33] In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E (m).

Information Bulletin

The Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [34] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares are listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon

[31] 17 CFR 240.10A–3.

[32] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[33] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA'').

[34] 15 U.S.C. 78f(b)(5).

conversion of fixed income convertible securities and certain Work-Out Securities with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio.

The Exchange notes that, other than Commentary .01(a)(1), (a)(2), (b)(5), and (e) to Rule 8.600–E, as described above, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, certain REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work-Out Securities will be available via the CTA high-speed line. Exchange-traded options quotation and last sale information for options cleared via the OCC are available via OPRA. The Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.600–E (d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally will hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, Disclosed Portfolio, and quotation and last sale information for the Shares.

Deviations from the generic requirements, as described above, are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in a manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirements set forth in Commentary .01(a)(1) and (a)(2) to NYSE Arca Rule 8.600–E with respect to the Fund's investments in equity securities. Instead, the Exchange proposes that (i) the Fund's investments in equity securities will meet the requirements of Commentary .01(a) with the exception of Commentary .01(a)(1)(C) and .01(a)(1)(D) (with respect to U.S. Component Stocks) and Commentary .01(a)(2)(C) and .01(a)(2)(D) (with respect to Non-U.S. Component Stocks). The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such equity securities do not comply with the requirements set forth in Commentary .01(a)(1) and (a)(2) to NYSE Arca Rule 8.600–E in that any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, U.S. exchange-traded closed-end funds, exchange-traded equity securities issued upon conversion of fixed income convertible securities, and exchange-traded Work Out Securities would provide for enhanced diversification of the Fund's portfolio. Such securities would be non-principal Fund investments, not exceeding 20% of the Fund's net assets in the aggregate.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) to Rule 8.600–E that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the fixed income portion of the Fund's portfolio. Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in Private ABS/MBS (calculated as the aggregate gross notional value), provided that the Fund may not invest more than 30% of its total assets in non-agency RMBS (calculated as the aggregate gross notional value). The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such Private ABS/MBS do not comply with the requirements set forth in Commentary .01(b)(5) to NYSE Arca Rule 8.600–E in that the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Board, and the Adviser and Sub-Adviser do not expect that investments in Private ABS/MBS of up to 50% of the total assets of the Fund will have any material impact

on the liquidity of the Fund's investments.

The Adviser and Sub-Adviser represent that the non-agency RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the CMBS and ABS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

As noted above, the Fund's portfolio will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, ''hedge''), and that the Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in OTC derivatives do not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600–E in that, depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.

The Adviser and Sub-Adviser represent that OTC derivatives can be tailored to hedge the specific risk arising from the Fund's investments and frequently may be a more efficient hedging vehicle than listed derivatives. For example, the Fund could obtain an OTC foreign currency derivative in a notional amount that exactly matches the notional amount of the Fund's investments. If the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund might have to ''over hedge'' or ''under hedge'' if round lot sizes in listed derivatives were not available. In addition, for example, an OTC CDX option can be structured to provide protection tailored to the Fund's credit exposure and can be a more efficient way to hedge credit risk with respect to specific exposures than listed derivatives. Similarly, OTC interest rate derivatives can be more effective hedges of interest rate exposure because they can be customized to match the basis risk arising from the term of the investments held by the Fund.

Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in foreign currency denominated Fixed Income Securities, the 20% limit in Commentary .01(e) to Rule 8.600–E could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund's ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund's assets (on a gross notional value basis) were $100 million and no listed derivative were suitable to hedge the Fund's risk, under the generic standards the Fund would be limited to holding up to $20 million gross notional value in OTC derivatives ($100 million * 20%). Accordingly, the maximum amount the Fund would be able to invest in foreign currency denominated Fixed Income Securities while remaining adequately hedged would be $20 million. The Fund then would hold $60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.

In addition, by applying the 20% limitation in Commentary .01(e) to Rule 8.600–E, the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were $100 million and the Fund held $20 million in foreign currency denominated Fixed Income Instruments with two types of risks (*e.g.,* currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding $20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding $10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Adviser and Sub-Adviser believe that it is in the best interests of the Fund's shareholders for the Fund to be allowed to reduce the currency, interest rate or credit risk arising from the Fund's investments using the most efficient financial instrument. While certain risks can be hedged via listed derivatives, OTC derivatives (such as forwards, options and swaps) can be customized to hedge against precise risks. Accordingly, the Adviser and Sub-Adviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Therefore, the Exchange believes that increasing the percentage limit in Commentary .01(e), as described above, to the Fund's investments in OTC derivatives, including forwards, options and swaps, that are used specifically for hedging purposes would help protect investors and the public interest.

As noted above, the Fund's portfolio will not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities,and, with respect to the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, would not meet the requirements of Commentary .01(a)(1)(A) through (E) and Commentary .01(a)(2) (A) through (E) to Rule 8.600–E. The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities,and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) and Commentary .01(a)(2) (A) through (E) to Rule 8.600–E. Investments in non-exchange-traded securities of open-end investment company securities will not be principal investments of the Fund.[35] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet

[35] *See* note 23, *supra.*

its investment objective and to equitize cash in the short term.

With respect to any Fund holdings of exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities and Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of shares of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally will hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–43 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca-2018–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–43 and should be submitted on or before August 22, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16424 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83721; File No. SR–NASDAQ–2018–038]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Withdrawal of Proposed Rule Change To Amend Rule 4702(b)(14) To Establish a Price Improvement Only Variation on the Midpoint Extended Life Order

July 26, 2018.

On May 4, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a price improvement only variation on the Midpoint Extended Life Order. The proposed rule change was published for comment in the **Federal Register** on May 23, 2018.[3] On July 5, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission received one comment letter on the proposed rule change [6] and one response letter from the Exchange.[7] On July 23, 2018, the Exchange withdrew

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83272 (May 17, 2018), 83 FR 23978.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 83595, 83 FR 32158 (July 11, 2018). The Commission designated August 21, 2018 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] *See* Letter to Brent J. Fields, Secretary, Commission, from Sal Arnuk and Joe Saluzzi, Partners, Co-Founders, and Co-Heads of Equity Trading, Themis Trading LLC, dated June 12, 2018.

[7] *See* Letter to Brent J. Fields, Secretary, Commission, from Brett M. Kitt, Senior Associate General Counsel, Nasdaq, dated July 10, 2018.

the proposed rule change (SR–NASDAQ–2018–038).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16425 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83714; File No. SR–OCC–2018–803]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice, as Modified by Amendments No. 1 and 2, Concerning Proposed Changes to the Options Clearing Corporation's Stress Testing and Clearing Fund Methodology

July 26, 2018.

I. Introduction

On May 30, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2018–803 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] to propose changes to OCC's By-Laws and Rules, the formalization of a substantially new Clearing Fund Methodology Policy (''Policy''), and the adoption of a document describing OCC's new Clearing Fund and stress testing methodology (''Methodology Description'').[4] The proposed changes are primarily designed to enhance OCC's overall resiliency, particularly with respect to the level of OCC's pre-funded financial resources. Specifically, the proposed changes would:

(1) Reorganize, restate, and consolidate the provisions of OCC's By-Laws and Rules relating to the Clearing Fund into a newly revised Chapter X of OCC's Rules;

(2) modify the coverage level of OCC's Clearing Fund sizing requirement to protect OCC against losses stemming from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions (*i.e.,* adopt a ''Cover 2 Standard'' for sizing the Clearing Fund);

(3) adopt a new risk tolerance for OCC to cover a 1-in-50 year hypothetical market event at a 99.5% confidence level over a two-year look-back period;

(4) adopt a new Clearing Fund and stress testing methodology, which would be underpinned by a new scenario-based one-factor risk model stress testing approach, as detailed in the newly proposed Policy and Methodology Description;

(5) document governance, monitoring, and review processes related to Clearing Fund and stress testing;

(6) provide for certain anti-procyclical limitations on the reduction in Clearing Fund size from month to month;

(7) increase the minimum Clearing Fund contribution requirement for Clearing Members to $500,000;

(8) modify OCC's allocation weighting methodology for Clearing Fund contributions;

(9) reduce from five to two business days the timeframe within which Clearing Members are required to fund Clearing Fund deficits due to monthly or intra-month resizing or due to Rule amendments;

(10) provide additional clarity in OCC's Rules regarding certain anti-procyclicality measures in OCC's margin model; and

(11) make a number of other non-substantive clarifying, conforming, and organizational changes to OCC's By-Laws, Rules, Collateral Risk Management Policy, Default Management Policy, and filed procedures, including retiring OCC's existing Clearing Fund Intra-Month Re-sizing Procedure, Financial Resources Monitoring and Call Procedure (''FRMC Procedure''), and Monthly Clearing Fund Sizing Procedure, as these procedures would no longer be relevant to OCC's proposed Clearing Fund and stress testing methodology and would be replaced by the proposed Rules, Policy, and Methodology Description described herein.

On June 7, 2018, OCC filed Amendment No. 1 to the Advance Notice.[5] The Advance Notice, as amended, was published for public comment in the **Federal Register** on July 6, 2018.[6] On July 11, 2018, OCC filed Amendment No. 2 to the Advance Notice.[7] The Commission received five comment letters in support of the proposal contained in the Advance Notice.[8] This publication serves as notice of no objection to the Advance Notice.

II. Background

The Advance Notice concerns proposed changes to OCC's By-Laws[9] and Rules,[10] the formalization of the substantially new Policy, and the adoption of OCC's new Methodology Description.[11] According to OCC, the changes comprising the Advance Notice are primarily designed to enhance OCC's overall resiliency, particularly with respect to the level of OCC's pre-funded financial resources.[12]

---

[8] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing *infra* note 6, at 83 FR 31594.

[5] In Amendment No. 1, OCC corrected formatting errors in Exhibits 5A and 5B without changing the substance of the proposed rule change.

[6] Securities Exchange Act Release No. 83561 (Jun. 29, 2018), 83 FR 31594 (Jul. 6, 2018) (''Notice of Filing''). On May 30, 2018, OCC also filed a related proposed rule change (SR–OCC–2018–008) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, seeking approval of changes to its rules necessary to implement the Advance Notice (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on June 15, 2018. Securities Exchange Act Release No. 83406 (Jun. 11, 2018), 83 FR 28018 (Jun. 15, 2018).

[7] In Amendment No. 2, OCC made three non-substantive changes to the proposal. Specifically, OCC (1) updated a cross-reference in Article VI, Section 27 of the OCC By-Laws to reflect the relocation of OCC's clearing fund-related rules, (2) added an Interpretation and Policy to proposed Rule 1001 to clarify the applicability of the 5 percent month-over-month limitation in the reduction of clearing fund size is not intended to apply to the initial changes in to OCC's clearing fund sizing resulting from implementation of the proposed methodology, and (3) clarified an implementation date of September 1, 2018 for the proposed changes in the filing.

[8] *See* letter from Andrej Bolkovic, CEO, ABN AMRO Clearing Corporation LLC (''AACC''), dated June 26, 2018, to Brent Fields, Secretary, Commission (AACC Letter I) ; letter from Chris Concannon, President and COO, Cboe Global Markets (''CBOE''), dated July 6, 2018, to Brent Fields, Secretary, Commission (CBOE Letter I); letter from Matthew R. Scott, President, Merrill Lynch Professional Clearing Corp. (''MLPRO''), dated July 6, 2018, to Brent J. Fields, Secretary, Commission (MLPRO Letter I); letter from Kurt Eckert, Partner, Wolverine Execution Services (''WEX''), dated July 12, 2018, to Brent Fields, Secretary, Commission (WEX Letter I); and letter from Mark Dehnert, Managing Director, Goldman Sachs & Co. LLC (''GS''), dated July 17, 2018, to Brent J. Fields, Secretary, Commission (GS Letter I), *available at https://www.sec.gov/comments/sr-occ-2018-008/occ2018008.htm.*

Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the proposed rule change or the Advance Notice.

[9] OCC's By-Laws are available at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_bylaws.pdf.*

[10] OCC's Rules are available at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf.*

[11] *See* Notice of Filing, 83 FR at 31594.

[12] *See id.*

As enumerated in the Notice of Filing, the specific modifications that OCC proposes are as follows: (1) Reorganize, restate, and consolidate the provisions of OCC's By-Laws and Rules relating to the clearing fund into a revised Chapter X of OCC's Rules; (2) modify the coverage level of OCC's clearing fund sizing requirement to protect OCC against losses stemming from the default of the two clearing member groups that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions (*i.e.,* adopt a ''Cover 2 Standard'' for sizing the clearing fund); (3) adopt a new risk tolerance for OCC to cover a 1-in-50 year hypothetical market event at a 99.5% confidence level over a two-year look-back period; (4) adopt a new clearing fund and stress testing methodology, which would be underpinned by a new scenario-based one-factor risk model stress testing approach, as detailed in the proposed Policy and Methodology Description; (5) document governance, monitoring, and review processes related to the clearing fund and stress testing; (6) provide for certain anti-procyclical limitations on the reduction in clearing fund size from month to month; (7) increase the minimum clearing fund contribution requirement for clearing members from $150,000 to $500,000; (8) modify OCC's allocation weighting methodology for clearing fund contributions; (9) reduce from five to two business days the timeframe within which clearing members are required to fund clearing fund deficits due to monthly or intra-month resizing; (10) provide additional clarity in OCC's Rules regarding certain anti-procyclicality measures in OCC's margin model; and (11) make a number of other non-substantive clarifying, conforming, and organizational changes to OCC's By-Laws, Rules and filed procedures, including retiring OCC's existing Clearing Fund Intra-Month Re-sizing Procedure, Financial Resources Monitoring and Call Procedure, and Monthly Clearing Fund Sizing Procedure, as these procedures would be replaced by the proposed Rules, Policy, and Methodology Description.[13]

The remainder of this section will first provide an overview of OCC's current process for sizing the clearing fund, followed by a more detailed discussion of the specific changes to that process being proposed in the Advance Notice, with particular focus on the following categories: (a) Stress testing; (b) total financial resources; (c) financial resource sufficiency; (d) allocation of clearing fund contributions; and (e) textual clarification and consolidation.

A. OCC's Current Process for Sizing the Clearing Fund

OCC's process for determining the size of its clearing fund was initially approved in 2011,[14] and enhanced in 2015,[15] resulting in OCC's current process. Currently, OCC resizes its clearing fund at the beginning of each month to maintain financial resources, in excess of margin, to cover its credit exposures to its clearing members. The current process is effectively an extension of OCC's daily margin process, in which OCC calculates what it refers to as the ''daily draw'' based on observations from its margin model at specific confidence levels each day.[16] OCC tracks the rolling five-day average of these daily draws and, at the beginning of each month, sets the clearing fund size to the sum of (1) the largest five-day rolling average observed over the last three months and (2) a $1.8 billion buffer.[17]

As described in detail below, OCC is proposing three primary changes to the existing approach. First, instead of simply relying on its margin model, OCC would rely on the proposed stress testing framework, including both sizing and sufficiency stress tests. Second, OCC would set the size of its clearing fund based on a Cover 2 Standard. Third, OCC would eliminate the current $1.8 billion static buffer because it would be obsolete in light of the new sizing stress tests and increased coverage afforded by the move to a Cover 2 Standard that, together, would function as a dynamic buffer.

B. Stress Testing

OCC proposes to adopt a new stress testing methodology, as detailed in both the proposed Policy and the proposed Methodology Description.[18] OCC believes that its proposed methodology would enable it to measure its credit exposure at a level sufficient to cover potential losses under extreme but plausible market conditions.[19] To do so, OCC proposes to conduct daily stress tests that consider a range of relevant stress scenarios and related price changes, including but not limited to: (1) Relevant peak historic price volatilities; (2) shifts in other market factors including, as appropriate, price determinants and yield curves; and (3) the default of one or multiple clearing members.[20]

The stress scenarios used in OCC's proposed methodology would consist of two types of scenarios: historical scenarios and hypothetical scenarios.[21] Historical Scenarios would replicate historical events in current market conditions, which include the set of currently existing securities and their prices and volatility levels.[22] Hypothetical scenarios, rather than replicating past events, would simulate events in which market conditions change in ways that may have not yet been observed.[23] Hypothetical Scenarios, constructed using statistical methods, would generally include price shocks specific to various instruments, such as equity products, volatility products, and fixed income products. Each scenario would represent a draw from a multivariate distribution fitted to historical data regarding the relevant instrument (*e.g.,* returns of the S&P 500).[24] In a hypothetical scenario, the shock to a risk driver would be used to determine the relative shock to each associated risk factor (*i.e.,* related underlying security).[25] For example, OCC would establish the size of its clearing fund according to a scenario that is based on statistically generated up or down price shocks for the SPX assuming a 1-in-80 year market event.[26]

OCC's proposed stress testing framework would categorize OCC's

[13] *See id.* at 31594–95.

[14] *See* Securities Exchange Act Release No. 65386 (Sep. 23, 2011), 76 FR 60572 (Sep. 29, 2011) (Order Approving Clearing Fund I).

[15] *See* Securities Exchange Act Release No. 75528 (Jul. 27, 2015), 80 FR 45690 (Jul. 31, 2015) (Order Approving Clearing Fund II).

[16] *See* Order Approving Clearing Fund I, 76 FR at 60572–60573. Each day, OCC estimates credit exposures under the stressed margin model for two scenarios: the greater of the two estimates is the daily draw. The two scenarios are of (1) the single largest credit exposure that would arise out of the default of a single clearing member group (''idiosyncratic default'') and (2) the credit exposure that would arise out of the default of two-randomly selected clearing member groups (''minor systemic default''). *See* Notice of Filing, 83 FR at 31595.

[17] *See* Order Approving Clearing Fund II, 80 FR at 45691.

[18] *See* Notice of Filing, 83 FR at 31597.

[19] *See id.*

[20] *See id.* at 31598.

[21] *See id.* Because not all of the underlying securities in current portfolios existed during the events on which historical scenarios are based, OCC has developed methodologies to approximate the past price and volatility movements as appropriate. *See id.* at 31600.

[22] *See id.* at 31598.

[23] *See id.*

[24] *See id.* at 31599. Risk drivers are a selected set of securities or market indices (*e.g.,* the Cboe S&P 500 Index (''SPX'') or the Cboe Volatility Index (''VIX'')) that are used to represent the main sources or drivers for the price changes of the risk factors. *See id.* at 31597, n. 26. The term risk factor refers broadly to all of the individual underlying securities (such as Google, IBM and Standard & Poor's Depositary Receipts (''SPDR''), S&P 500 Exchange Traded Funds (''SPY''), etc.) listed on a market. *See id.*

[25] *See id.* at 31598.

[26] *See id.* at 31599.

inventory of stress tests by each stress test's intended purpose: Adequacy, sizing, sufficiency, and informational.[27] Specifically, OCC would use the (1) ''Adequacy Stress Tests'' to determine whether the financial resources collected from all clearing members collectively are adequate to cover OCC's risk tolerance; (2) ''Sizing Stress Tests'' to establish the monthly size of the clearing fund; (3) ''Sufficiency Stress Tests'' to monitor whether OCC's credit exposure to the portfolios of individual clearing member groups is at a level sufficiently large enough to necessitate OCC calling for additional resources so that OCC continues to maintain sufficient financial resources to guard against potential losses under a wide range of stress scenarios, including extreme but plausible market conditions; and (4) ''Informational Stress Tests'' to monitor and assess the size of OCC's pre-funded financial resources against a wide range of stress scenarios that may include extreme but implausible and reverse stress testing scenarios.[28]

C. Total Financial Resources

As noted above, OCC proposes to (i) to adopt a new clearing fund methodology, which would be underpinned by a new scenario-based one-factor risk model stress testing approach,[29] modify the coverage level of OCC's clearing fund sizing requirement to a Cover 2 Standard; (iii) provide for certain anti-procyclical limitations on the reduction in clearing fund size from month to month; and (iv) reduce from five business days to two business days the timeframe within which clearing members are required to satisfy clearing fund deficits due to monthly or intra-month resizing.[30]

1. Proposal To Change the Monthly Clearing Fund Size Calculation

As discussed above, OCC proposes to replace the methodology by which it determines the monthly clearing fund size with an approach based on hypothetical stress scenarios that assume SPX shocks (up and down) associated with a 1-in-80-year market event.[31] Under the proposal, OCC would continue determining the size of its clearing fund each month based on the peak-five daily rolling average of estimated stress exposures; however, such exposures would be based on the output from OCC's stress testing framework going forward as opposed to the margin-derived approach described above.[32]

As its benchmark for identifying extreme but plausible market conditions, OCC proposes to adopt a credit risk tolerance defined by OCC's largest potential aggregate credit exposure to two clearing member groups under a 1-in-50-year hypothetical market event as opposed to the greater of exposures arising under an idiosyncratic default or a minor systemic default.[33] OCC further proposes to base its daily draw on the aggregate credit exposures estimated under a 1-in-80-year hypothetical market event.[34] Additionally, OCC proposes to size the clearing fund to a Cover 2 Standard.[35]

OCC believes that sizing the clearing fund to cover a 1-in-80-year event would provide sufficient coverage in excess of the exposures estimated under a 1-in-50-year event to justify no longer collecting the $1.8 prudential margin of safety.[36]

2. Proposal To Limit Reductions in Clearing Fund Size From Month to Month

Currently, OCC does not constrain month-over-month changes in the size of the clearing fund. OCC proposes to adopt two limitations on month-over-month decreases in the size of the clearing fund. First, OCC proposes to prohibit a clearing fund decrease of more than 5 percent month-over-month.[37] Second, OCC proposes to limit the clearing fund decreases based on its daily monitoring of OCC's financial resources. When determining the size of the clearing fund at the beginning of a given month, OCC would not allow that size to be less than 90 percent of the peak credit exposures estimated under the stress tests used for daily monitoring during the last five business days of the preceding month.[38] These limitations are designed to reduce the potential for cyclical movements in the size of the clearing fund, as well as reduce the need for OCC to call for additional financial resources intra-month.[39]

3. Timing of Clearing Fund Contributions

In addition to revising the methodology for sizing OCC's total financial resources, OCC proposes generally to reduce the time in which each clearing member must make its clearing fund contribution.[40] Clearing members currently have five business days to satisfy a clearing fund deficiency arising out of the monthly sizing or intra-month resizing processes. OCC proposes to reduce that time to two business days.[41] OCC also proposes to require clearing members to satisfy any clearing fund deficit resulting from a decrease in the value of the clearing member's existing contribution within one hour of notification by OCC.[42]

D. Financial Resource Sufficiency

As noted above, OCC proposes to (i) adopt a new clearing fund methodology, as detailed in the newly-proposed Policy and Methodology Description and (ii) document governance, monitoring, and review processes related to the clearing fund and stress testing.[43] Proposed changes to OCC's clearing fund methodology include the assessment of OCC's clearing fund against a wide range of historical scenarios.[44]

1. Proposal To Monitor the Sufficiency of OCC's Financial Resources

Currently, OCC monitors the sufficiency of its financial resources daily by estimating whether the size of the clearing fund is sufficient to cover a maximum potential loss from a simulated idiosyncratic default.[45] Under its current procedures, when OCC observes credit exposures estimated under the idiosyncratic default in excess of 75 percent of the clearing fund size, OCC issues a margin call against the clearing member group generating the credit exposures.[46] The size of such a margin call is the difference between the idiosyncratic default exposure and the

[27] *See id.* at 31600.

[28] *See id.* at 31600–02.

[29] OCC detailed the new methodology in the proposed Policy and Methodology Description.

[30] *See* Notice of Filing, 83 FR at 31596.

[31] *See id.* at 31599.

[32] *See id.* at 31600. Specifically, OCC would identify its exposures under a 1-in-80-year hypothetical event. *See id.*

[33] *See id.* at 31597. As discussed above, OCC's hypothetical stress scenarios represent draws from a fitted distribution of 2-day log returns for a given risk driver. OCC noted in its proposal that a 1-in-50-year hypothetical market event corresponds to a 99.9921 percent confidence interval under OCC's chosen distribution of 2-day logarithmic S&P 500 index returns. *See id.,* n. 25.

[34] *See id.* at 31600.

[35] *See id.* at 31597.

[36] *See id.,* n. 23.

[37] *See id.* at 31603.

[38] *See id.* As discussed below, OCC proposes to monitor the sufficiency of its financial resources daily by comparing the size of the clearing fund to the output of several historical stress tests.

[39] *See id.*

[40] *See id.* at 31605.

[41] *See id.*

[42] *See id.*

[43] *See id.* at 31596.

[44] *See id.*

[45] *See id.* at 31595–96. As noted above, an idiosyncratic default is one of the two scenarios that OCC currently uses to determine the size of the clearing fund each month. *See supra* note 16. Specifically, the single largest credit exposure that would arise out of the default of a single clearing member group.

[46] *See id.* at 31595.

base clearing fund amount.[47] The margin call is allocated among the individual clearing members in the clearing member group based on each clearing member's proportionate share of the risk to OCC.[48] OCC may limit the size of the margin call to each clearing member to the lesser of $500 million or 100 percent of such clearing member's net capital.[49]

OCC's current procedures also call for increases to the total size of the clearing fund in more extreme scenarios. When OCC observes credit exposures estimated under the idiosyncratic default[50] exceeding 90 percent of the clearing fund size OCC must, under its procedures, increase the size of the clearing fund.[51] The size of the increase to the clearing fund is the greater of $1 billion or 125 percent of the difference between the idiosyncratic default exposure and the clearing fund.[52]

OCC proposes to revise this process by replacing the above-described idiosyncratic default approach with an approach that compares the size of the clearing fund to the exposures estimated under a set of historical scenario stress tests (''Sufficiency Stress Tests'').[53] The Sufficiency Stress Tests proposed by OCC include the largest market moves up and down during 2008 on a cover 2 basis and the market moves associated with the 1987 market crash on a cover 1 basis.[54]

OCC proposes to call for additional margin when it observes that one or more clearing member groups' exposure under a Sufficiency Stress Test exceeds 75 percent of the clearing fund.[55] Under the proposal, the size of the margin call would be the amount by which the Sufficiency Stress Test exposure exceeds the 75 percent threshold.[56] Similar to the current process, OCC proposes to retain authority to limit such margin calls to each clearing member to $500 million or 100 percent of the clearing member's net capital.[57]

OCC also proposes to revise the process for increasing the size of the clearing fund under more extreme scenarios. OCC proposes to increase the size of the clearing fund when it observes a Sufficiency Stress Test exposure in excess of 90 percent of the clearing fund.[58] Similar to the current process, the size of the clearing fund increase would be the greater of $1 billion or 125 percent of the difference between the Sufficiency Stress Test exposure and the clearing fund.[59] OCC also proposes to provide new authority to its Chief Executive Officer, Chief Administrative Officer, and Chief Operating Officer to temporarily increase the size of the clearing fund, subject to notice and later review by OCC's Board Risk Committee (''RC'').[60]

Additionally, OCC proposes to add a new threshold at which it would commence enhanced monitoring of a clearing member group.[61] Where OCC observes that a clearing member group's Sufficiency Stress Test exposure exceeds 65 percent of the clearing fund, OCC would commence enhanced monitoring of, and provide notice to the clearing member group.[62]

2. Proposal To Document Governance Processes Related to the Clearing Fund and Stress Testing

OCC proposes to establish, as part of its rules, processes for the governance, monitoring, and review of the stress testing framework and clearing fund methodology described above.[63] Such processes would cover daily, monthly, and annual review of OCC's stress testing framework and clearing fund methodology.

On a daily basis, OCC's staff would monitor the size of the clearing fund against OCC's risk tolerance and sufficiency stress tests.[64] OCC staff would be required to report material issues to the Executive Vice President of OCC's Financial Risk Management group (''EVP–FRM''). The EVP–FRM would further escalate issues with OCC management as applicable.

On a monthly basis, OCC's staff would provide reports and analyses of the daily stress tests to OCC's Management Committee and RC.[65] OCC's staff would also be responsible for conducting a comprehensive analysis of stress test results, scenarios, models, parameters, and assumptions monthly or more frequently when the products cleared or markets served by OCC display high volatility or become less liquid or when the size or concentration of positions held by OCC's participants increases significantly.[66]

On an annual basis, OCC's Model Validation Group would be required to perform a model validation of OCC's clearing fund methodology.[67] The RC would review such validations.[68] The RC would also be responsible for annual review and approval of the Policy.[69]

E. Allocation of Clearing Fund Contributions

As noted above, OCC proposes to (i) increase the minimum clearing fund contribution requirement for clearing members to $500,000 and (ii) modify OCC's allocation weighting methodology for clearing fund contributions.[70]

1. Proposal To Increase the Minimum Clearing Fund Contribution

Currently, the minimum amount a clearing member must contribute to OCC's clearing fund (the ''fixed amount'') is $150,000.[71] OCC proposes to increase the fixed amount to $500,000.[72] The minimum contribution requirement has been in place since June 5, 2000,[73] and has remained static while the average size of OCC's clearing fund has increased significantly.[74] OCC also noted that other CCPs' minimum requirements are well in excess of OCC's minimum contribution requirement.[75] OCC analyzed the impact of the proposed change on its clearing members and discussed such impacts with the potentially affected clearing members, the majority of which did not express concerns over the proposed increase.[76]

[47] *See id.* As noted above in section II.A., the base clearing fund amount is the size of the clearing fund less the $1.8 billion prudential margin of safety.

[48] *See id.,* n. 13.

[49] *See id.* at 31595.

[50] OCC would reduce the size of the idiosyncratic default exposure by factoring in margin calls issued due to a breach of the 75 percent threshold described above. *See id.* at 31596.

[51] *See id.*

[52] *See id.*

[53] *See id.* at 31600.

[54] *See id.* at 31601. OCC proposes to measure the clearing fund against the two largest exposures under the 2008-like events and the one largest exposure under a 1987-like event. *See id.*

[55] *See id.*

[56] *See id.*

[57] *See id.* at 31601–02.

[58] *See id.*

[59] *See id.*

[60] *See id.* at 31602.

[61] *See id.* at 31601. Based on OCC's procedures, staff understands that such monitoring would entail escalation within OCC's Financial Risk Management group noting the relevant clearing member, the future potential for breach of the 75 percent margin call threshold, and a summary of the apparent risk drivers resulting in the stress exposures.

[62] *See id.*

[63] *See id.* at 31602.

[64] *See id.*

[65] *See id.* at 31602–03.

[66] *See id.*

[67] *See id.* at 31603.

[68] *See id.*

[69] *See id.*

[70] *See id.* at 31596.

[71] *See id.* at 31604. The initial amount that a new clearing member must contribute to OCC's clearing fund is also $150,000. *See id.* at 31603.

[72] *See id.* at 31604. OCC similarly proposes to increase the initial contribution. *See id.* at 31603.

[73] *See id.* (citing Securities Exchange Act Release No. 42897 (June 5, 2000), 65 FR 36750 (June 9, 2000) (SR–OCC–99–9)).

[74] *See id.* at 31603–04.

[75] *See id.* at 31603.

[76] *See id.* at 31604.

2. Proposal To Modify the Clearing Fund Allocation Weighting

In addition to the fixed amount described above, most clearing members are required to contribute an additional amount to OCC's clearing fund (the ''variable amount''). The variable amount is based on the weighted average of each clearing member's proportionate share of total risk, open interest, and volume.[77] Currently, OCC uses the following weighting in its allocation of clearing fund requirements: 35 percent total risk; 50 percent open interest; and 15 percent volume.[78] OCC proposes to modify the allocation weighting as follows: 70 percent total risk; 15 percent open interest; and 15 percent volume.[79]

F. Textual Clarification and Consolidation

Finally, as noted above, OCC proposes to (i) reorganize, restate, and consolidate the provisions of OCC's By-Laws and Rules relating to the Clearing Fund into a newly-revised Chapter X of OCC's Rules; (ii) provide additional clarity in OCC's Rules regarding certain anti-procyclicality measures in OCC's margin model; and (iii) make a number of other non-substantive clarifying, conforming, and organizational changes to OCC's By-Laws, Rules, and filed procedures, including retiring OCC's existing Clearing Fund Intra-Month Re-sizing Procedure, Financial Resources Monitoring and Call Procedure, and Monthly Clearing Fund Sizing Procedure, as these procedures would be replaced by the proposed Rules, Policy, and Methodology Description.[80]

1. Proposal To Reorganize, Restate, and Consolidate Certain Rule Text

The primary provisions that address OCC's Clearing Fund are currently located in Article VIII of the By-Laws and Chapter X of the Rules.[81] OCC believes that consolidating all of the Clearing Fund-related provisions of its By-Laws and Rules into one place would provide more clarity around, and enhance the readability of, OCC's Clearing Fund requirements.[82] Given the scope of changes described above, OCC believes that it is appropriate to make such revisions at this time.[83]

The changes to the provisions currently residing in OCC's By-Laws require an affirmative vote of two-thirds of the directors then in office, but not less than a majority of the number of directors fixed by the By-Laws; however, changes to OCC's rules generally require only a majority vote of OCC's Board of Directors.[84] OCC proposes to amend its By-Laws to maintain the existing requirements for modifying those rules that would be moved from Article VIII of OCC's By-Laws to Chapter X of its Rules.[85]

2. Proposal To Add Rule Text Clarifying Anti-Procyclicality Measures in OCC's Margin Model

OCC's existing methodology for calculating margin requirements incorporates measures designed to ensure that margin requirements are not lower than those that would be calculated using volatility estimated over a historical look-back period of at least ten years.[86] OCC now proposes to amend its Rule 601(c) to reflect this practice.[87] OCC believes that the proposed change would provide more clarity and transparency in its rules.[88]

3. Proposal To Make Other Non-Substantive Changes to OCC's Rules

OCC proposes a number of clarifying, conforming, and organizational changes to its By-Laws, Rules, Collateral Risk Management Policy, Default Management Policy, and Clearing Fund-related procedures in connection with the proposed enhancements to its Pre-Funded Financial Resources and the relocation of OCC's Clearing Fund-related By-Laws into Chapter X of the Rules.[89]

In addition to the relocation of rules described above, OCC would also make minor, non-substantive revisions. For example, OCC would replace text referencing ''computed contributions to the Clearing Fund'' and ''as fixed at the time'' with text stating ''required contributions to the Clearing Fund'' and ''as calculated at the time'' to more accurately reflect that these rules are intended to refer to a Clearing Member's required Clearing Fund contribution amount as calculated under the proposed rules.[90]

Further, OCC proposes to update references to Article VIII of the By-Laws in its Collateral Risk Management Policy and Default Management Policy to reflect the relocation of OCC's Clearing Fund-related By-Laws into Chapter X of the Rules.[91]

Finally, OCC proposes to replace procedures regarding its processes for (i) the monthly resizing of its Clearing Fund, (ii) the addition of financial resources, and (iii) the execution of any intra-month resizing of the Clearing Fund.[92] OCC proposes to retire its existing procedures because the relevant rule requirements would be maintained in the proposed rules as well as the Clearing Fund Methodology Policy and Clearing Fund Methodology Description included as part of the Advance Notice.[93]

III. Summary of Comments

As noted above, the Commission received five comment letters—AACC Letter I, CBOE Letter I, MLPRO Letter I, WEX Letter I, and GS Letter I—supporting the changes proposed in the Advance Notice.[94] Two of the commenters urge the Commission to approve the proposal as expeditiously as possible.[95] AACC believes that the proposal would remediate two problems with the current clearing fund methodology: (1) OCC's current clearing fund sizing methodology failing to contain sufficient anti-procyclicality measures, and (2) OCC's current clearing fund contribution allocation methodology failing to appropriately incentivize clearing member risk management.[96]

Regarding the clearing fund sizing methodology, AACC believes that the proposal would implement a number of measures intended to provide stability and consistency to the size of OCC's clearing fund.[97] Specifically, AACC supports (1) sizing the clearing fund based on a variety of risk factors, and (2) testing the size of the clearing fund on a daily basis against extreme but plausible market events, thereby lowering the likelihood that OCC's clearing fund would be insufficient to protect OCC and market participants in the event of a clearing member default.[98] MLPRO believes that the proposed changes would create a more transparent and predictable model.[99]

[77] *See id.* Total risk refers to a clearing member's margin requirement. *See id.,* n. 44. Additionally, the current methodology calculates volume based on executed volume. *See id.* at 31604.

[78] *See id.*

[79] *See id.* The definition of total risk would remain the same, but OCC would calculate volume based on cleared volume as opposed to executed volume. *See id.*

[80] *See id.* at 31596.

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See id.* at 31596–97.

[86] *See id.* at 31606.

[87] *See id.*

[88] *See id.*

[89] *See id.*

[90] *See id.* at 31607, n. 52.

[91] *See id.* at 31607.

[92] *See id.* at 31607–08.

[93] *See id.* at 31608.

[94] *See supra* note 8.

[95] AACC Letter I at 1; MLPRO Letter I at I.

[96] AACC Letter I at 1.

[97] *Id.* at 2.

[98] *Id.* at 2–3.

[99] MLPRO Letter I at 2.

Similarly, GS supports OCC's proposal to include more comprehensive testing scenarios by including observed market events over a longer historical period, which would improve the overall quality of OCC's stress testing and strengthen OCC's ability to model risk scenarios.[100] Additionally, WEX believes that the proposed changes, specifically changes regarding how the monthly clearing fund sizing process will address anti-procyclicality, should help reduce operational issues related to a clearing member's obligations increasing and decreasing.[101]

AACC states that, from a theoretical perspective, OCC's proposed sizing methodology constitutes a significant improvement over the current sizing methodology in that the size of the clearing fund would be less influenced by changes in volatility because OCC is introducing other risk drivers into the sizing methodology as well as monitoring and augmenting such risk drivers on a daily basis based on market conditions.[102] AACC also comments that the proposal would cause the size of OCC's clearing fund to become more stable because OCC would test for adequacy and sufficiency on a daily basis using a series of historical and hypothetical stress tests that are rooted in extreme but plausible market events.[103]

Commenters also believe that the proposal would improve OCC's risk models by correcting existing shortcomings.[104] CBOE comments that the adoption of a Cover 2 standard would ensure that the size of the clearing fund is sufficient to protect OCC against losses from the simultaneous default of its two largest Clearing Members under extreme, but plausible market conditions.[105] GS also agrees with OCC's proposal to adopt a Cover 2 Standard.[106] MLPRO comments that the adoption of a Cover 2 standard in establishing a new model to measure the adequacy of the clearing fund and address potential default scenarios would address issues that MLPRO identifies with OCC's current model.[107] MLPRO also supports OCC's (1) adopting risk tolerance and stress testing assumptions that are developed from extreme, but plausible scenarios, and (2) calibrating individual equity price movements to the price shock for the applicable equity index to address issues with the current model.[108]

Regarding the changes to the clearing fund allocation methodology, commenters believe that the proposal would better align clearing members' required clearing fund contribution to the risk they present to OCC and other market participants.[109] AACC states that the proposed changes would place more emphasis on the economic risk presented by a clearing member's cleared contracts than the operational risk presented by a high volume clearing member, thereby better recognizing that certain types of clearing members present a relatively lower risk to OCC even though they may represent a higher percentage of overall activity (*i.e.,* clearing members with market-maker and other risk-neutral customers).[110] Similarly, WEX supports allocation based on cleared volumes as opposed to executed volumes in consideration of where a positon is cleared as opposed to where it is executed.[111] MLPRO also supports increases the weighting of total risk in the allocation process.[112] Commenters also believe that the proposed changes make sense from a default and liquidation perspective.[113]

Commenters AACC and WEX believe that the proposed changes would have positive effects on the listed options market.[114] Similarly, MLPRO believes that the proposed changes would increase liquidity in the listed options market.[115] Additionally, GS believes that the proposed changes will greatly enhance OCC's resiliency and risk management.[116]

IV. Discussion and Commission Findings

Although the Act does not specify a standard of review for an advance notice, the stated purpose of the Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[117]

Section 805(a)(2) of the Act[118] authorizes the Commission to prescribe regulations containing risk-management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency. Section 805(b) of the Act[119] provides the following objectives and principles for the Commission's risk-management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk-management standards may address such areas as risk-management and default policies and procedures, among others areas.[120]

The Commission has adopted risk-management standards under Section 805(a)(2) of the Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[121] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk-management practices on an ongoing basis.[122] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Act,[123] and in the Clearing

[100] GS Letter I at 2. In its letter, GS refers to OCC's movement to a 1-in-80-year period from a 1-in-50-year model. The Commission notes that OCC's current process is not based on a 1-in-50-year model, and that OCC is now proposing to adopt a new risk tolerance based on a 1-in-50-year hypothetical event. *See* Notice of Filing, 83 FR at 31596. Further, OCC proposes to base the size of the clearing fund on the aggregate credit exposures estimated under a 1-in-80-year hypothetical market event (as opposed to an historical market event). *See id.* at 31600.

[101] WEX Letter I at 1.

[102] AACC Letter I at 3.

[103] *Id.*

[104] CBOE Letter I at 1; MLPRO Letter I at 1–2.

[105] CBOE Letter I at 1.

[106] GS Letter I at 2.

[107] MLPRO Letter I at 1–2.

[108] *Id.*

[109] AACC Letter I at 4; WEX Letter I at 1; GS Letter I at 1.

[110] AACC Letter I at 4.

[111] WEX Letter I at 2.

[112] MLPRO Letter I at 2.

[113] AACC Letter I at 4; GS Letter I at 1.

[114] AACC Letter I at 5; WEX Letter I at 2.

[115] MLPRO Letter I at 1.

[116] GS Letter I at 2.

[117] *See* 12 U.S.C. 5461(b).

[118] 12 U.S.C. 5464(a)(2).

[119] 12 U.S.C. 5464(b).

[120] 12 U.S.C. 5464(c).

[121] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[122] 17 CFR 240.17Ad–22.

[123] 12 U.S.C. 5464(b).

Agency Rules, in particular Rules 17Ad–22(e)(1) and 17Ad–22(e)(4).[124]

A. Consistency With Section 805(b) of the Act

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management in the area of credit risk, promoting safety and soundness, reducing system risks, and supporting the stability of the broader financial system.[125]

First, as described above, OCC's current process for sizing the clearing fund was established in 2011 and strengthened under a 2015 interim approach. The current process is essentially an extension of OCC's margin model. In general, margin requirements for clearing members are very reactive to market movements and changes in clearing member portfolios. Because OCC's current process for sizing the clearing fund is based on a relatively dynamic daily margin process, the size of the clearing fund can at times be volatile and cyclical in nature. The changes proposed in the Advance Notice based the sizing and monitoring of OCC's clearing fund on a stable inventory of stress tests rather than continuing to rely on a dynamic margin model. The Commission believes this new approach would provide OCC with a more precise, rigorous, and stable assessment of the financial resources it would need to hold in its clearing fund to cover its credit risk exposure to its members in extreme but plausible market conditions, which in turn would enhance OCC's overall risk management.

Second, with respect to the robustness of the new stress testing framework itself, the Commission believes that the stress tests proposed in OCC's framework are an improvement over OCC's current approach in this area, as the stress tests comprise a wide range of foreseeable stress scenarios. The scenarios cover historical events as extreme as the 2008 financial crisis and 1987 market crash as well as hypothetical events derived from a dataset of historical S&P returns. OCC's proposed stress testing framework would also include a category of stress tests designed specifically for review of OCC's financial resources against implausible scenarios and reverse stress tests. Such stress tests would not directly affect the total amount of OCC's financial resources, but would facilitate a more forward looking risk management process. Accordingly, while as an ongoing supervisory matter the Commission expects OCC to consider and, as necessary, implement future enhancements to its suite of stress tests, the Commission believes that the suite of stress tests that OCC proposes to establish in its risk management framework pursuant to the Advance Notice represents a material improvement to OCC's current risk management practices for estimating potential future losses in extreme but plausible market conditions.

Third, as described above, OCC proposes to adopt several enhancements to its methodology for determining the size of its clearing fund. OCC proposes to adopt an internal credit risk tolerance based on hypothetical stress scenarios, which would provide OCC with a benchmark that it believes represents extreme but plausible market conditions. The Commission believes that establishing such a tolerance is a valuable step in accurately estimating the total financial resources necessary to cover OCC's exposures in extreme but plausible market conditions. Next, OCC proposes to set the size of its clearing fund to cover a scenario that is more extreme than its internal tolerance to ensure consistent coverage, which the Commission believes would be another valuable step in accurately estimating OCC's necessary total financial resources. Further, OCC proposes to cover its two largest credit exposures when setting the size of the clearing fund, which goes further than OCC's current practice of covering the greater of OCC's single largest exposure or two random exposures. For the same reasons, the Commission believes this, too, would improve OCC's risk management practices. Finally, OCC proposes to limit the potential reductions in the size of the clearing fund month-over-month. Such limitations would avoid large drops in the clearing fund size over a short period of time and unnecessary reductions followed by immediate calls for additional resources at the beginning of each month. Taken together, the Commission believes that all of these enhancements to the calculation of OCC's clearing fund requirements would enhance OCC's risk management practices and allow it to more accurately estimate the total financial resources necessary to cover its exposures in extreme but plausible market conditions.

Fourth, the proposal discussed above would expand and improve upon the scope of stress scenarios against which OCC monitors is financial resources. Under the proposal OCC would continue to review the size of its clearing fund against exposures under a stress scenario designed to replicate the 1987 market crash, and would also introduce monitoring against other historical scenarios such as the largest market moves up and down observed during the 2008 financial crisis. In addition, OCC would continue its practice of collecting additional resources in margin collateral and clearing fund requirements where stress exposures exceed 75 percent and 90 percent, respectively, of the size of the clearing fund. Based on a review of the parameters of the scenario replicating the 1987 market crash, the Commission believes that the scenario presents potential losses that are extreme while also plausible in light of their historical basis. Additionally, the Commission believes that the scenario would provide stress exposure estimates that would be meaningful for the monitoring of OCC's total financial resources. The Commission also believes that the introduction of new historical scenarios, such as those replicating the financial crisis, would provide additional depth to the monitoring of OCC's financial resources. The Commission believes, therefore, that the changes proposed in the Advance Notice include the adoption of a wide range of stress scenarios for the testing of OCC's financial resources. Consequently, the Commission believes that the expansion of the scope of stress scenarios, along with the inclusion of a scenario replicating the 1987 market crash, will result in a stress testing framework that promotes robust risk management at OCC.

Fifth, OCC would document its periodic review and analysis of its stress testing framework and clearing fund methodology, which would include (1) daily review of stress test outputs, (2) monthly (or more frequently as needed) analysis of the stress test results, scenarios, models, parameters, and assumptions, and (3) annual validation of the clearing fund methodology. OCC also would clearly define the process for escalating the results of its daily and monthly analyses and require on an annual basis Board level review and approval of the Clearing Fund Methodology Policy. The Commission believes that these governance processes would help ensure that OCC is in a position to continuously monitor,

[124] 17 CFR 240.17Ad–22(e)(1); 17 CFR 240.17Ad–22(e)(4).

[125] 12 U.S.C. 5464(b).

analyze, and adjust as necessary both the stress testing framework and the clearing fund methodology, thereby helping to ensure the accuracy and reliability of the methodology by which OCC tests the sufficiency of its financial resources.

Taken together, and for the reasons discussed above, the Commission believes that these proposals would promote robust risk management at OCC by better ensuring that OCC maintains sufficient financial resources in excess of margin to enable it to cover a wide range of stress scenarios that include, but are not limited to the default of the participant family that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions.

By enhancing the precision with which OCC estimates the total financial resources that it must maintain, reducing the time it takes OCC to fund clearing fund contributions, and limiting month-to-month reductions in the size of the clearing fund, the Commission also believes the changes proposed in the Advance Notice promote safety and soundness. The Commission agrees that, by shortening the timeframe within which each clearing member must make its required clearing fund contribution, OCC would be able to better ensure that it is able to obtain the funds owed from clearing members in a timely fashion so that OCC can continue to meet its overall financial resource requirements.[126] Reducing the period of time between the identification of credit exposures and the collection of collateral to cover such exposures reduces the period of time during which OCC could be under collateralized. Ensuring that OCC is able to obtain collateral in a timely manner promotes safety and soundness. Similarly, limiting large reductions and cyclical swings in the size of OCC's clearing fund reduces the potential for OCC to give up resources only to find that they are necessary to cover its credit exposures to participants. Consequently, the Commission believes that the proposed reduction in funding time and limitations designed to constrain procyclical changes in the size of the clearing fund promote safety and soundness.

In addition, the Commission believes that the limitations on clearing fund size reductions described above, as well as the proposed allocation methodology changes, are designed to reduce systemic risk and promote the stability of the broader financial system. Reducing the likelihood of procyclical swings in the size of OCC's clearing fund should provide more certainty and stability to OCC's clearing members. For example, such increased certainty should help reduce the risk that clearing members would be surprised and destabilized by a request from OCC for a clearing fund size increase, thereby limiting the likelihood that such requests could destabilize the broader financial system or heighten systemic risk. The Commission believes that the increases of the initial and minimum contributions to the clearing fund are commensurate with the growth of OCC's clearing fund over time.[127] Finally, the Commission believes that the proposed changes to OCC's allocation weighting will allow OCC to better manage its credit exposures to its clearing members by better aligning each clearing member's contributions to the credit risk it poses to OCC, thereby allowing OCC to better manage its credit exposures to its participants. The Commission believes that increased certainty and the alignment of obligations with risk would both reduce potential systemic risks and promote the stability of the broader financial system by reducing the likelihood of unexpected and potentially destabilizing clearing fund obligations for clearing members.

Finally, the Commission believes that OCC's proposed textual clarifications and reorganization would also support the stability of the broader financial system. The reorganization and consolidation of rule provisions related to OCC's clearing fund would enhance the readability of OCC's public-facing rules, and additional clarification of OCC's margin rules would promote transparency by providing the public with information about OCC's risk management processes. The Commission believes that the additional clarity and transparency provided by these proposed change would support the stability of the broader financial system by removing potential sources of confusion or misunderstanding regarding the operations and potential consequences of OCC's risk management processes in respect of the clearing fund.

Accordingly, and for the reasons stated, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Act.[128]

B. Consistency With Rule 17Ad–22(e)(4) Under the Exchange Act

1. Total Financial Resources

Rules 17Ad–22(e)(4)(i) and (iii) under the Exchange Act requires, among other things, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by, among other things, maintaining financial resources at the minimum to enable OCC to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions.[129]

As described above, the proposal includes enhancements to OCC's methodology for sizing its clearing fund to ensure that it maintains sufficient financial resources, including: (i) Adoption of an internal credit risk tolerance that OCC believes represents extreme but plausible market conditions; (ii) sizing the clearing fund to cover credit exposures under scenarios that are more extreme than OCC's risk tolerance, (iii) sizing the clearing fund to cover the default of the two clearing member groups that that would potentially cause the largest aggregate credit exposure for OCC; (iv) limiting the potential reduction in clearing fund size month-over-month; and (v) shortening the time by which each clearing member must fund its clearing fund contribution.

Taken together, the Commission believes that proposed changes described above are designed to improve the process by which OCC sizes its total financial resources and are consistent with the requirements of Rules 17Ad–22(e)(4)(i) and (iii) under the Exchange Act. First, the proposal is designed to cover credit exposures in excess of those posed by any one clearing member group because OCC is proposing to cover the largest aggregate exposure to two clearing member groups. Second, the proposal is designed to cover credit exposures in extreme but plausible market conditions because OCC proposes to size its clearing fund based on scenarios that are more extreme than those that OCC believes to represent extreme but plausible market conditions. Further, based on the Commission's detailed analysis of the relevant scenarios

[126] *See* Notice of Filing, 83 FR at 31605.

[127] OCC's overall clearing fund size has increased significantly since the current initial and minimum contributions were set in 2000. *See id.* at 31603–04.

[128] 12 U.S.C. 5464(b).

[129] 17 CFR 240.17Ad–22(e)(4)(i) and (iii).

through the supervisory process, the Commission believes that OCC has defined extreme but plausible scenarios in an acceptable manner for the markets served. Finally, the Commission believes that proposal would support the consistent and stable maintenance of an appropriate level of total financial resources by limiting month-over-month reductions in the size of clearing fund and requiring clearing members to make clearing fund contributions within two business days. Accordingly, the Commission believes that the proposed modifications to OCC's clearing fund sizing methodology are consistent with Exchange Act Rule 17Ad–22(e)(4)(i) and (iii).[130]

2. Financial Resource Sufficiency

Rule 17Ad–22(e)(4)(vi) under the Exchange Act requires OCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements under paragraphs Rules 17Ad–22(e)(4)(i) through (iii).[131] Such testing must include (A) conducting stress testing of OCC's total financial resources once each day using standard predetermined parameters and assumptions; (B) conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considering modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current and evolving market conditions; (C) conducting a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by the covered clearing agency's participants increases significantly; and (D) reporting the results of such analyses to appropriate decision makers at OCC, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate clearing or guaranty fund requirements, and any other relevant aspects of its credit risk management framework, in supporting compliance with the minimum financial resources requirements set forth in paragraphs (e)(4)(i) through (iii) of Rule 17Ad–22.[132] Additionally, pursuant to Rule 17Ad–22(e)(4)(vii) of the Exchange Act, the policies and procedures required under Rule 17Ad–22(e)(4) must include the performance of a model validation of OCC's credit risk models not less than annually or more frequently as may be contemplated by OCC's risk management framework.[133]

After reviewing and assessing the proposal, the Commission believes that the proposed changes described above are consistent with Rules 17Ad–22(e)(4)(vi) and (vii) under the Exchange Act,[134] because, among other reasons, (i) they are designed to improve the testing of OCC's financial resources; (ii) expanding the scope of stress scenarios against which OCC monitors its financial resources would increase the likelihood that OCC maintains sufficient financial resources at all times; and (iii) the formalization of OCC's processes for the periodic review and analysis its stress testing framework and clearing fund methodology is designed to support OCC's monitoring of its financial resources.

In addition, the Commission believes that (i) the daily testing of OCC's financial resources against the sufficiency stress tests, including stress tests based on market movements in the 2008 financial crisis and the 1987 market crash included in the proposal would be consistent with the daily stress testing requirements of Rule 17Ad–22(e)(4)(vi)(A), as described above; (ii) the at least monthly analysis of stress test results, scenarios, models, parameters, and assumptions, with more frequent review and analysis as required would be consistent with the monthly comprehensive analysis requirements set forth in Rule 17Ad–22(e)(4)(vi)(B) and (C) as described above; and (iii) the annual validation of OCC's clearing fund methodology discussed in more detail above would be consistent with model validation requirements of Rule 17Ad–22(e)(4)(vii). The proposal also contemplates the reporting and escalation of such testing, analyses, and validations to OCC's management and Board of Directors, which the Commission believes would be consistent with the reporting requirements of Rule 17Ad–22(e)(4)(vi)(D).

Accordingly, taken together and for the reasons discussed above, the Commission believes that the proposed stress testing and clearing fund methodology governance changes are consistent with Exchange Act Rules 17Ad–22(e)(4)(vi) and (vii).[135]

3. Proposal To Modify the Clearing Fund Allocation Methodology

As noted above, Rule 17Ad–22(e)(4) under the Exchange Act requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, effectively manage its credit exposures to participants.[136]

As discussed above, OCC manages its credit exposures not covered by margin through the allocation of clearing fund requirements to its clearing members. OCC proposes to determine the size of is clearing fund based on the measurement of its credit exposures under hypothetical stress scenarios, and to monitor such exposures under historical stress scenarios. OCC also proposes to increase the initial and minimum clearing fund contribution amounts from $150,000 to $500,000, and to modify the allocation weighting used to determine the variable amount that most clearing members contribute to the clearing fund. Specifically, under the proposal, the proposed clearing fund contribution requirements would be based on an allocation methodology of 70 percent of total risk, 15 percent of open interest and 15 percent of open interest (as opposed to the current weighting of 35 percent total risk, 50 percent open interest, and 15 percent volume).

The Commission believes that the changes described above are reasonably designed to improve OCC's management of its credit exposures to participants. First, OCC's overall clearing fund size has increased significantly since the current initial and minimum contributions were set in 2000 and OCC's requirements are lower than the minimum requirements imposed by other CCPs. The Commission believes that the proposed changes to OCC's initial and minimum clearing fund contribution amounts are designed to better manage the risks posed by clearing members with minimal open interest, and are commensurate with the growth of OCC's clearing fund over time. The Commission also believes that the changes to OCC's allocation weighting will allow OCC to better

[130] *Id.*

[131] 17 CFR 240.17Ad–22(e)(4)(vi) (citing 17 CFR 240.17Ad–22(e)(4)(i)–(iii)).

[132] 17 CFR 240.17Ad–22(e)(4)(vi)(A)–(D).

[133] 17 CFR 240.17Ad–22(e)(4)(vii).

[134] 17 CFR 240.17Ad–22(e)(4)(vi) and (vii).

[135] *Id.*

[136] 17 CFR 240.17Ad–22(e)(4).

manage its credit exposures to its clearing members by better aligning each clearing member's contributions to the credit risk it poses to OCC, thereby allowing OCC to better manage its credit exposures to its participants.

Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the sizing, monitoring, and allocation of clearing fund requirements are consistent with Exchange Act Rule 17Ad–22(e)(4).[137]

C. Consistency With Rule 17Ad–22(e)(1) Under the Exchange Act

Rule 17Ad–22(e)(1) under the Exchange Act requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[138] The Commission has stated that, in establishing and maintaining policies and procedures to address legal risk, a covered clearing agency generally should consider whether its rules, policies and procedures, and contracts are clear, understandable, and consistent with relevant laws and regulations.[139]

The Commission believes that the proposed consolidation and reorganization of OCC's Rules described above would improve readability by locating all rules related to the clearing fund in one place, thereby enhancing the clarity, transparency, consistency, and understandability of OCC's Rules related to the clearing fund. Additionally, by amending the Rules to accurately reflect OCC's current margin practices, the Commission believes OCC's Rules will be more transparent and understandable.

Accordingly, the Commission believes that the proposed textual reorganization and clarifications are consistent with Rule 17Ad–22(e)(1).[140]

V. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Payment Supervision Act, that the Commission *does not object* to Advance Notice (SR–OCC–2018–803) and that OCC is *authorized* to implement the proposed change.

[137] *Id.*

[138] 17 CFR 240.17Ad–22(e)(1).

[139] Covered Clearing Agency Standards at 70802.

[140] 17 CFR 240.17Ad–22(e)(1).

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16417 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83723; File No. SR–BatsBZX–2016–30]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust

July 26, 2018.

I. Introduction

On June 30, 2016, Bats BZX Exchange, Inc. (''BZX'') filed a proposed rule change with the Commission, seeking to list and trade shares of the Winklevoss Bitcoin Trust.[1] The Commission, acting through authority delegated to the Division of Trading and Markets,[2] disapproved the proposed rule change on March 10, 2017,[3] and BZX then filed a timely petition seeking Commission review of the disapproval by delegated authority.[4] The Commission granted BZX's Petition for Review, seeking public comments in support of or in opposition to the March Disapproval Order.[5] Today's order sets aside the March Disapproval Order, and, for the reasons discussed below, disapproves BZX's proposed rule change.[6]

In response to BZX's Petition for Review, the Commission has conducted a *de novo* review of BZX's proposal[7]—giving careful consideration to the entire record, including BZX's amended proposal and Petition for Review and all comments and statements submitted by BZX and other persons—to determine whether the proposal is consistent with the requirements of the Exchange Act and the rules and regulations issued thereunder that are applicable to a national securities exchange.[8] Specifically, the Commission has considered whether the BZX proposal is consistent with Exchange Act Section 6(b)(5), which requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[9]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued

[1] BZX made this filing under Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (''Exchange Act'') and Rule 19b–4 thereunder, 17 CFR 240.19b–4. The Commission published notice of the proposed rule change in the **Federal Register** on July 14, 2016. *See* Exchange Act Release No. 78262 (July 8, 2016), 81 FR 45554 (July 14, 2016) (SR–BatsBZX–2016–30). On August 23, 2016, the Commission designated a longer period within which to act on the proposed rule change. *See* Exchange Act Release No. 78653 (Aug. 23, 2016), 81 FR 59256 (Aug. 29, 2016). On October 12, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act, 15 U.S.C. 78s(b)(2)(B), to determine whether to approve or disapprove the proposed rule change. *See* Exchange Act Release No. 79084 (Oct. 12, 2016), 81 FR 71778 (Oct. 18, 2016). On October 20, 2016, BZX filed Amendment No. 1 to the proposed rule change, replacing the original filing in its entirety, and Amendment No. 1 was published for comment in the **Federal Register** on November 3, 2016. *See* Exchange Act Release No. 79183 (Oct. 28, 2016), 81 FR 76650 (Nov. 3, 2016) (''Amendment No. 1''). On January 4, 2017, the Commission designated a longer period for Commission action on the proposed rule change. *See* Exchange Act Release No. 79725 (Jan. 4, 2017), 82 FR 2425 (Jan. 9, 2017). On February 22, 2017, BZX filed Amendment No. 2 to the proposed rule change (''Amendment No. 2''). Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-batsbzx-2016-30/batsbzx201630-1594698-132357.pdf.*

[2] *See* 17 CFR 200.30–3(a)(12).

[3] *See* Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (Mar. 16, 2017) (''March Disapproval Order'').

[4] On March 17, 2017, pursuant to Rule 430 of the Rules of Practice, *see* 17 CFR 201.430(b)(1), BZX submitted a Notice of Intention to Petition for Review of Order Disapproving a Proposed Rule Change, and on March 24, 2017, BZX submitted its Petition for Review (''Petition for Review''). BZX's Notice of Intention to Petition for Review is available on the Commission's website at: *https://www.sec.gov/rules/sro/batsbzx/2017/batsbzx-petitionforreview.pdf.* BZX's Petition for Review is available on the Commission's website at: *https://www.sec.gov/rules/sro/batsbzx/2017/petition-for-review-sr-batsbzx-2016-30.pdf.*

[5] On April 24, 2017, pursuant to Rule 431 of the Rules of Practice, *see* 17 CFR 201.431, the Commission issued an order granting the Petition for Review, *see* Exchange Act Release No. 80511 (Apr. 24, 2017), 82 FR 19770 (Apr. 28, 2017) (''Review Order''), and designated May 15, 2017, as the date by which any party to the action or any other person could file a written statement in support of or in opposition to the March Disapproval Order. *See id.*

[6] Commissioner Peirce dissents from the Commission's disapproval of this proposal, and her written dissent can be found on the Commission's website, *https://www.sec.gov.*

[7] Pursuant to Rule 431(a) of the Commission's Rules of Practice, the Commission may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, an action made pursuant to delegated authority. 17 CFR 201.431(a).

[8] Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of an SRO, such as a national securities exchange, if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the SRO and directs the Commission to disapprove the proposed rule change if it is unable to make such a finding. *See* 15 U.S.C. 78s(b)(2)(C).

[9] 15 U.S.C. 78f(b)(5).

thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [10] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[11] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[12]

BZX argues, among other things, that its proposal is consistent with Exchange Act Section 6(b)(5) on the grounds that the ''geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin'' [13]—and that therefore the bitcoin market ''generally is less susceptible to manipulation than the equity, fixed income, and commodity futures markets'' [14]—and because ''novel systems intrinsic to this new market provide unique additional protections that are unavailable in traditional commodity markets.'' [15] BZX also asserts that the March Disapproval Order failed to appreciate that the proposal provides ''traditional means of identifying and deterring fraud and manipulation,'' [16] and that the proposal meets the criteria that the Commission has utilized in approving other commodity-trust ETPs as it relates to the ability to monitor for, detect, and deter fraud and manipulation and violations of exchange rules and applicable federal securities laws and rules.[17] BZX also claims that the March Disapproval Order overstates the extent to which surveillance and regulation of the underlying market have been present in prior commodity-trust ETP approval orders and the extent to which the Commission has relied on the existence of surveillance-sharing agreements between an ETP listing market and markets related to the underlying assets.[18]

The Commission addresses each of these arguments below. In Section III.B, the Commission addresses BZX's assertion that bitcoin and bitcoin markets, including the Gemini Exchange, are uniquely resistant to manipulation and finds that the record before the Commission does not support such a conclusion. In Section III.C, the Commission addresses whether what BZX describes as ''traditional means'' of identifying and deterring fraud and manipulation are sufficient to meet the requirements of Exchange Act Section 6(b)(5) and also finds that the record does not support such a conclusion.

Then, in Sections III.D and III.E, respectively, the Commission addresses the use and importance of surveillance-sharing agreements to detect and deter fraud and manipulation, and whether BZX has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin.[19] Although surveillance-sharing agreements are not the *exclusive* means by which an ETP listing exchange can meet its obligations under Exchange Act Section 6(b)(5), such agreements are a widely used means for exchanges that list ETPs to meet their obligations, and the Commission has historically recognized their importance.[20] And where, as here, a listing exchange fails to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [21] Based on the record before it, the Commission concludes that—unlike the listing exchanges for previously approved commodity-trust ETPs—BZX has not established that it has entered into, or currently could enter into, a surveillance-sharing agreement with a regulated market of significant size related to bitcoin.

Finally, in Section III.F, the Commission addresses arguments raised regarding the protection of investors and the public interest, and, in Section III.G, the Commission discusses additional factors supporting disapproval of the BZX proposal.

Although the Commission is disapproving this proposed rule change, the Commission emphasizes that its disapproval does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed in detail below, BZX has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of the Exchange Act Section 6(b)(5), in particular the requirement that its rules be designed to prevent fraudulent and manipulative acts and practices.

While the record before the Commission indicates that a substantial majority of bitcoin trading occurs on unregulated venues overseas that are relatively new and that, generally, appear to trade only digital assets,[22] and while the record does not support a conclusion that bitcoin derivatives markets have attained significant size,[23] the Commission notes that regulated bitcoin-related markets are in the early stages of their development. Over time, regulated bitcoin-related markets may continue to grow and develop. For example, existing or newly created bitcoin futures markets may achieve significant size, and an ETP listing exchange may be able to demonstrate in a proposed rule change that it will be able to address the risk of fraud and manipulation by sharing surveillance information with a regulated market of significant size related to bitcoin, as well as, where appropriate, with the spot markets underlying relevant bitcoin derivatives. Should these circumstances develop, or conditions otherwise change in a manner that affects the Exchange Act analysis, the Commission would then have the opportunity to consider whether a bitcoin ETP would be consistent with the requirements of the Exchange Act.

[10] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[11] *See id.*

[12] *See id.*

[13] *See* Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel & Corporate Secretary, BZX, at 12 (May 15, 2017) (''BZX Letter II'').

[14] *Id.*

[15] *Id.* at 26.

[16] *Id.*

[17] *See id.* at 22.

[18] *See id.* at 26–27.

[19] The Commission considers two markets that are members of the Intermarket Surveillance Group to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement.

[20] *See* Section III.D.2(a), *infra.*

[21] Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98) (''NDSP Adopting Release'').

[22] For example, the Registration Statement for the Winklevoss Bitcoin Trust discloses that ''[t]he Bitcoin Exchanges on which bitcoin trades are new and, in most cases, largely unregulated.'' *See* Registration Statement on Form S–1, as amended, dated February 8, 2017, at 22 (File No. 333–189752) (''Registration Statement''). *See also* Sections III.E.1 and III.E.2, *infra* (discussing the distribution of bitcoin trading and the state of regulation of bitcoin spot markets).

[23] *See infra* notes 312–316 and accompanying text.

II. Description of the Proposal

BZX proposes to list and trade shares (''Shares'') of the Winklevoss Bitcoin Trust (''Trust'') as Commodity-Based Trust Shares under BZX Rule 14.11(e)(4).[24] The Trust would hold only bitcoins as an asset,[25] and the bitcoins would be in the custody of, and secured by, the Trust's custodian, Gemini Trust Company LLC (''Custodian''), which is a limited-liability trust company chartered by the State of New York and supervised by the New York State Department of Financial Services (''NYSDFS'').[26] Gemini Trust Company is also an affiliate of Digital Asset Services LLC, the sponsor of the Trust (''Sponsor'').[27] The Trust would issue and redeem the Shares only in ''Baskets'' of 100,000 Shares and only to ''Authorized Participants,'' and these transactions would be conducted ''in-kind'' for bitcoin only.[28]

The investment objective of the Trust would be for the Shares to track the price of bitcoin on the Gemini Exchange, which is a digital-asset exchange owned and operated by the Gemini Trust Company.[29] The Net Asset Value (''NAV'') of the Trust would be calculated each business day, based on the clearing price of that day's 4:00 p.m. Eastern Time (''ET'') Gemini Exchange bitcoin auction, a two-sided auction open to all Gemini Exchange customers (''Gemini Auction'').[30] The Intraday Indicative Value (''IIV'') of the Trust would be calculated and disseminated by the Sponsor, every 15 seconds during BZX's regular trading session, based on the most recent Gemini Auction price.[31]

BZX represents that it has entered into a comprehensive surveillance-sharing agreement with the Gemini Exchange.[32] Further details regarding the proposal and the Trust can be found in Amendments No. 1 and 2 to the proposal,[33] and in the registration statement for the Trust.[34]

III. Discussion

A. Overview

The comment period for the proposed rule change filed by BZX ended November 25, 2016. The Commission, as of March 10, 2017, received 66 comment letters on the proposed rule change.[35] Additionally, in response to the Review Order, the Commission, as of July 13, 2018, received eight comments in connection with the Petition for Review.[36] The comments cover a variety of topics, including the analysis of the BZX proposal in the March Disapproval Order,[37] the nature of the worldwide market for bitcoin,[38] the characteristics of the Gemini digital asset exchange,[39] the need for surveillance-sharing agreements with significant markets,[40] the state of the market for derivatives on bitcoin,[41] and the protection of investors,[42] as well as a number of comments on the nature of bitcoin and of the Bitcoin network, the structure of the Trust and the Trust's valuation and security protocols, and

[24] BZX Rule 14.11(e)(4)(C) permits the listing and trading of ''Commodity-Based Trust Shares,'' which are defined as a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by the trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by the trust, which will deliver to the redeeming holder the quantity of the underlying commodity.

[25] Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''Bitcoin Blockchain.'' The Bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. *See* Amendment No. 1, *supra* note 1, 81 FR at 76652. The proposed rule change describes the ETP's underlying bitcoin asset as a ''digital asset'' and as a ''commodity,'' *see id.* at 76652 & n.21, and describes the ETP as a Commodity-Based Trust. For the purpose of considering this proposal, this order describes a bitcoin as a ''digital asset'' and a ''commodity.''

[26] *See id.* at 76651–52.

[27] *See id.* at 76651.

[28] *See id.* at 76664–65. *See also* Amendment No. 2, *supra* note 1.

[29] *See* Amendment No. 1, *supra* note 1, 81 FR at 76652.

[30] *See id.* at 76652, 76664. In the event that the Sponsor determines that the Gemini Auction price, because of extraordinary circumstances, is ''not an appropriate basis for evaluation of the Trust's bitcoin on a given Business Day,'' BZX's proposal provides that the Sponsor may use other specified criteria to value the holdings of the Trust. *See id.* at 76664.

[31] *See id.* at 76666.

[32] *See id.* at 76668.

[33] *See* Amendments No. 1 and 2, *supra* note 1.

[34] *See* Registration Statement, *supra* note 22. BZX represents in the proposed rule change that the Registration Statement will be effective as of the date of any offer and sale pursuant to the Registration Statement. *See* Amendment No. 1, *supra* note 1, 81 FR at 76651.

[35] *See* Letters from Robert D. Miller, VP Technical Services, RKL eSolutions (July 11, 2016) (''R.D. Miller Letter''); Jorge Stolfi, Full Professor, Institute of Computing UNICAMP (July 13, 2016) (''Stolfi Letter I''); Guillaume Lethuillier (July 26, 2016) (''Lethuillier Letter''); Michael B. Casey (July 31, 2016) (''Casey Letter I''); Erik A. Aronesty, Sr. Software Engineer, Bloomberg LP (Aug. 2, 2016) (''Aronesty Letter''); Dan Anderson (Aug. 27, 2016) (''Anderson Letter''); Robert Miller (Oct. 12, 2016) (''R. Miller Letter''); Anonymous (Oct. 13, 2016) (''Anonymous Letter I''); Nils Neidhardt (Oct. 13, 2016) (''Neidhardt Letter''); Dana K. Barish (2 letters; Oct. 13, 2016) (''Barish Letter I'' and ''Barish Letter II''); Xin Lu (Oct. 13, 2016) (''Xin Lu Letter''); Rodger Delehanty CFA (Oct. 14, 2016) (''Delehanty Letter''); Dylan (Oct. 14, 2016) (''Dylan Letter''); Dana K. Barish (Oct. 14, 2016) (''Barish Letter III''); Dana K. Barish (2 letters; Oct. 15, 2016) (''Barish Letter IV'' and ''Barish Letter V''); Jorge Stolfi, Full Professor, Institute of Computing UNICAMP (Nov. 1, 2016) (''Stolfi Letter II''); Michael B. Casey (Nov. 5, 2016) (''Casey Letter II''); Anonymous (Nov. 8, 2016) (''Anonymous Letter II''); Chris Burniske, Blockchain Products Lead, ARK Investment Management LLC (Nov. 8, 2016) (''ARK Letter''); Colin Keeler (Nov. 14, 2016) (''Keeler Letter''); Robert S. Tull, (Nov. 14, 2016) (''Tull Letter''); Mark T. Williams (Nov. 15, 2016) (''Williams Letter''); Anonymous (Nov. 21, 2016) (''Anonymous Letter III''); XBT OPPS Team (Nov. 21, 2016) (''XBT Letter''); Anonymous (Nov. 22, 2016) (''Anonymous Letter IV''); Ken I. Maher (Nov. 22, 2016) (''Maher Letter''); Kyle Murray, Assistant General Counsel, Bats Global Markets, Inc. (Nov. 25, 2016) (''BZX Letter I''); Colin Baird (Nov. 26, 2016) (''Baird Letter''); Scott P. Hall (Jan. 5, 2017) (''Hall Letter''); Suzanne H. Shatto (Jan. 24, 2017) (''Shatto Letter''); Joshua Lim and Dan Matuszewski, Treasury & Trading Operations, Circle internet Financial, Inc. (Feb. 3, 2017) (''Circle Letter''); Zachary J. Herbert (Feb. 10, 2017) (''Herbert Letter''); Thomas Fernandez (Feb. 12, 2017) (''Fernandez Letter''); Diego Tomaselli (Feb. 17, 2017) (''Tomaselli Letter''); Hans Christensen (Feb. 20, 2017) (''Christensen Letter''); Jake Kim (Feb. 22, 2017) (''Kim Letter''); Andrea Dalla Val (Mar. 4, 2017) (''Dalla Val Letter''); Josh Barraza (Mar. 6, 2017) (''Barraza Letter''); Chad Rigsby (Mar. 6, 2017) (''Rigsby Letter''); Michael Lee (Mar. 6, 2017) (''Lee Letter''); Fabrizio Marchionne (Mar. 6, 2017) (''Marchionne Letter''); Ben Elron (Mar. 6, 2017) (''Elron Letter''); Patrick Miller (Mar. 6, 2017) (''P. Miller Letter''); Situation (Mar. 6, 2017) (''Situation Letter''); Steven Swiderski (Mar. 6, 2017) (''Swiderski Letter''); Marcia Paneque (Mar. 6, 2017) (''Paneque Letter''); Jeremy Nootenboom (Mar. 6, 2017) (''Nootenboom Letter''); Alan Struna (Mar. 6, 2017) (''Struna Letter''); Mike Johnson (Mar. 6, 2017) (''Johnson Letter''); Phil Chronakis (Mar. 7, 2017) (''Chronakis Letter''); Anonymous (Mar. 7, 2017) (''Anonymous Letter V''); Brian Bang (Mar. 7, 2017) (''Bang Letter''); Anthony Schulte (Mar. 7, 2017) (''Schulte Letter''); Melissa Whitman (Mar. 7, 2017) (''Whitman Letter''); Harold Primm (Mar. 8, 2017) (''Primm Letter''); Shad (Mar. 8, 2017) (''Shad Letter''); Anonymous (Mar. 8, 2017) (''Anonymous Letter VI''); Patrick Turley (Mar. 9, 2017) (''Turley Letter''); Anonymous (Mar. 9, 2017) (''Anonymous Letter VII''); Richard Kemble (Mar. 9, 2017) (''Kemble Letter''); Anonymous (Mar. 9, 2017) (''Anonymous Letter VIII''); Daniel Ackerman (Mar. 10, 2017) (''Ackerman Letter''); Obed Medina (Mar. 10, 2017) (''Medina Letter''); and John Paslaqua (Mar. 10, 2017) (''Paslaqua Letter''). All comments on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-batsbzx-2016-30/batsbzx201630.shtml.*

[36] *See* Letters from Douglas A. Cifu, Chief Executive Officer, Virtu Financial (May 11, 2017) (''Virtu Letter''); James A. Overdahl, Partner, Delta Strategy Group (May 12, 2017) (''Overdahl Letter''); Daniel H. Gallancy, SolidX Management LLC (May 15, 2017) (''SolidX Letter''); Jonathan G. Harris (May 15, 2017) (''Harris Letter''); Mick Kalishman, C&C Trading, LLC (May 15, 2017) (''C&C Letter''); Eric W. Noll, President and Chief Executive Officer, Convergex Group (May 15, 2017) (''Convergex Letter''); Jeffrey Yass, Managing Director, Susquehanna International Group, LLP (May 15, 2017) (''SIG Letter''); and BZX Letter II, *supra* note 13. All comments submitted in support of or in opposition to the March Disapproval Order are available on the Commission's website at: *https://www.sec.gov/comments/sr-batsbzx-2016-30/batsbzx201630.shtml.*

[37] *See infra* notes 44–48 and accompanying text.

[38] *See* Sections III.B.1(a) and III.E.2(a), *infra.*

[39] *See* Sections III.B.2(a) and III.E.1(a), *infra.*

[40] *See* Section III.D.1, *infra.*

[41] *See* Section III.E.3(a), *infra.*

[42] *See* Section III.F.1, *infra.*

the effect that Commission approval of the BZX proposal could have on bitcoin and the bitcoin markets.[43]

BZX's primary argument is that the standard set forth in the March Disapproval Order—the need for a surveillance sharing agreement between the ETP listing exchange and significant, regulated markets related to the underlying asset[44]—is not the only way that a listing exchange can satisfy Section 6(b)(5)'s requirement that its rules be designed to prevent fraudulent and manipulative acts and practices with respect to listing an ETP.[45] BZX argues that, in the case of a bitcoin commodity-trust ETP, traditional measures to detect and deter manipulation are sufficient.[46] BZX and certain commenters further argue that the March Disapproval Order misconstrued Section 6(b)(5) to mean that a bitcoin ETP can be listed and traded only if bitcoin ''cannot be manipulated.''[47] They argue that such a standard is inconsistent with the ''not readily susceptible to manipulation'' standard applied to other commodities that underlie ETPs.[48]

These arguments do not accurately reflect the nature of the Commission's inquiry and past practice. The Commission agrees that, if BZX had demonstrated that bitcoin and bitcoin markets are inherently resistant to fraud and manipulation, comprehensive surveillance-sharing agreements with significant, regulated markets would not be required, as the function of such agreements is to detect and deter fraud and manipulation. But because the underlying commodities market for this proposed commodity-trust ETP is not demonstrably resistant to manipulation, BZX, as the ETP listing exchange, must enter into surveillance-sharing agreements with, or hold Intermarket Surveillance Group membership in common with, at least one significant, regulated market relating to bitcoin.

Moreover, the Commission is not applying a ''cannot be manipulated'' standard to this proposal. Instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice,[49] is placing the burden on BZX to demonstrate the validity of its contention that the ''novel systems intrinsic to this new market provide unique additional protections that are unavailable in traditional commodity markets,''[50] and to establish that the requirements of the Exchange Act have been met.

Finding that BZX has not demonstrated that bitcoin and bitcoin markets are inherently resistant to manipulation, the Commission subjects the proposal to the analysis it has historically used to analyze commodity-trust ETPs, focusing particularly on whether there are comprehensive surveillance-sharing agreements with significant, regulated markets. Because adequate surveillance-sharing agreements are not in place—and any current surveillance-sharing agreements are with bitcoin-related markets that are either not significant, not regulated, or both—the Commission concludes that the proposal is inconsistent with Exchange Act Section 6(b)(5).

Accordingly, the Commission will examine whether the proposed rule change is consistent with Section 6(b)(5) by first addressing the arguments by BZX and certain commenters that bitcoin and bitcoin markets are inherently resistant to manipulation. The Commission will then address BZX's argument that what it describes as ''traditional means'' of identifying and deterring fraud and manipulation would be sufficient to comply with Exchange Act Section 6(b)(5), which requires that BZX's rules be designed to ''prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[51] Finding these arguments unpersuasive, the Commission concludes that the proposal is inconsistent with previously approved commodity-trust ETPs, which have universally relied on surveillance-sharing agreements with significant, regulated markets relating to the underlying commodity in order to prevent fraud and manipulation and to protect investors and the public interest. Finally, the Commission addresses and rejects additional factors that BZX contends support approval.

B. The Susceptibility of Bitcoin and Bitcoin Markets to Manipulation

BZX asserts that intrinsic properties of bitcoin and bitcoin markets, including the Gemini Exchange, provide resistance to manipulation. But BZX has failed to carry its burden to demonstrate that its assertion is correct.

1. The Structure of the Spot Market for Bitcoin

(a) Summary of Comments Received

BZX argues that intrinsic properties of bitcoin and bitcoin markets make manipulation ''difficult and prohibitively costly.''[52] BZX argues that ''novel systems intrinsic to this new market provide unique additional protections that are unavailable in traditional commodity markets.''[53] BZX asserts that the increasing strength and resilience of the global bitcoin marketplace serve to reduce the likelihood of price manipulation and that arbitrage opportunities across globally diverse marketplaces allow market participants to ensure approximately equivalent pricing worldwide. But BZX concedes that less liquid markets, such as the market for bitcoin, may be more susceptible to manipulation.[54]

BZX asserts that a number of new bitcoin market participants have emerged, changing the once concentrated and non-regulated landscape of the global bitcoin exchange marketplace, and that the emergence of these new market participants, who are chiefly arbitrageurs, causes global bitcoin exchange prices to converge.[55] BZX adds that arbitrageurs must have funds distributed across multiple bitcoin exchanges to take advantage of temporary price dislocations, and that this distribution of funds discourages concentration of funds on any one particular bitcoin exchange and mitigates the potential for manipulation on a bitcoin exchange because doing so would require overcoming the liquidity supply of arbitrageurs that are actively eliminating any cross-market pricing differences.[56]

BZX also asserts that the bitcoin spot market generally is less susceptible to manipulation than the equity, fixed income, and commodity futures markets, in part, because: (a) A substantial over-the-counter (''OTC'') market provides liquidity and shock absorbing capacity; (b) the ''24/7/365'' trading of bitcoin provides constant arbitrage opportunities across all trading venues and means that there is no single market-close for investors to attempt to manipulate; and (c) it is unlikely that any one actor could obtain a dominant

[43] *See* Section III.G, *infra.*

[44] *See* March Disapproval Order, *supra* note 3, 82 FR at 14082–84.

[45] *See* BZX Letter II, *supra* note 13, at 26.

[46] *See id.* at 12; *see also id.* at 13, 26.

[47] *See* BZX Letter II, *supra* note 13, at 13; and Overdahl Letter, *supra* note 36, at 2, 9–11.

[48] *See* BZX Letter II, *supra* note 13, at 13; and Overdahl Letter, *supra* note 36, at 2, 9–11.

[49] *See supra* notes 10–12 and accompanying text.

[50] *See* BZX Letter II, *supra* note 13, at 26.

[51] 15 U.S.C. 78f(b)(5).

[52] BZX Letter II, supra note 13, at 12, 13, 26; *see also* Petition for Review, *supra* note 4, at 11.

[53] *See supra* note 50 and accompanying text.

[54] *See* BZX Letter I, *supra* note 35, at 7.

[55] *See* Petition for Review, *supra* note 4, at 15.

[56] *See* BZX Letter II, *supra* note 13, at 15–16; Petition for Review, *supra* note 4, at 15.

market share.[57] BZX also claims that the transparency that the Trust will provide with respect to its bitcoin holdings, and the dissemination of the IIV and NAV of the Trust, will reduce the ability of market participants to manipulate the price of bitcoin or the price of the Shares.[58]

The Overdahl Letter, submitted in support of the BZX proposal,[59] asserts that the fungibility of bitcoin across bitcoin exchanges facilitates arbitrage and helps keep prices within the bounds of arbitrage, constraining the possibility of price manipulation on any one bitcoin trading venue.[60] Because of this linkage, the Overdahl Letter contends, manipulation of the bitcoin price on any one venue would require manipulation of the global bitcoin price to be effective, which would be prohibitively costly and is therefore unlikely. But the Overdahl Letter concedes that any market can potentially be manipulated.[61]

The Overdahl Letter further claims that, to the extent that ''spoofing conduct'' [62] is present in bitcoin markets, it is unlikely to have a material impact on the value of the Shares. According to the Overdahl Letter, this is because successful spoofing causes price oscillations of extremely small magnitudes (such as within the bid/ask spread) and does not result in a material change in the bitcoin price. This commenter also claims that spoofing victims are unlikely to be holders of the Shares, but rather market makers in the spot market, and concludes that the likelihood of spoofing in the bitcoin spot market is low.[63]

The Overdahl Letter further claims that even a ''dominant'' exchange (by trading volume) cannot dictate the global price of bitcoin because an exchange does not coordinate trading across its membership to influence the market price. This commenter argues that the existence of a dominant exchange in terms of trading volume does not imply that there is a dominant actor on the dominant exchange with the ability to attain a dominant market share to manipulate the price of bitcoin. Rather, this commenter argues, the larger the market share of an exchange, the harder it would be for a dominant actor to obtain a dominant market share of the dominant exchange's trading volume.[64]

Another analysis—the Lewis Letter [65]—argues that, as a general matter, the underlying market for bitcoin is inherently resistant to manipulation.[66] The Lewis Letter posits that the underlying bitcoin market is not susceptible to manipulation because: (a) There is no inside information related to bitcoin, such as earnings announcements; (b) the asset is not subject to the dissemination of false or misleading information; (c) each bitcoin market is an independent entity, so that a demand for liquidity does not necessarily propagate across other exchanges; (d) a substantial OTC market provides additional liquidity and absorption of shocks; (e) there is no market-close pricing event to manipulate; (f) the market is not subject to ''spoofing'' or other high-frequency-trading tactics; (g) order books on exchanges worldwide are publicly visible and available through APIs (application program interfaces); and (h) it is unlikely that any one person could obtain a dominant market share because of the existence of in-kind creations and redemptions, arbitrage across bitcoin markets, and the enhanced transparency that a bitcoin ETP would bring to bitcoin markets.[67] The Lewis Letter acknowledges the risk that a single investor or a small group acting in collusion could own a dominant share of the available bitcoin, but argues that the structure of the spot bitcoin market and the arbitrage mechanism reduce that risk.[68]

One commenter observes that the bitcoin/Chinese Yuan (BTC/CNY) quote is apt to trade at a significant premium to the bitcoin/U.S. dollar (BTC/USD) quote and points out that large arbitrage opportunities would not exist for long in efficient markets, but they do persist in bitcoin markets.[69] Another commenter claims that, because trade is now sparse on regulated U.S. exchanges, including Gemini, arbitrage will not occur efficiently or proportionally to mitigate manipulation from the dominant unregulated bitcoin exchanges.[70]

One commenter asserts that, in January 2017, major Chinese bitcoin exchanges OKCoin, Huobi, and BTCC implemented changes requested by the People's Bank of China to halt margin lending and to institute transaction fees. This commenter claims that these changes were put in place to discourage price manipulation, to drive down ''fake'' trading volume, and to dampen bitcoin volatility, and further claims that these changes have had profound and beneficial effects on bitcoin spot markets worldwide.[71]

One commenter states that the market for bitcoin, by trade volume, is very shallow. This commenter states that the majority of bitcoin is hoarded by a few owners or is out of circulation. The commenter also states that ownership concentration is high, with 50 percent of bitcoin in the hands of fewer than 1,000 people, and that this high ownership concentration creates greater market liquidity risk, as large blocks of bitcoin are difficult to sell in a timely and market efficient manner. This commenter claims that daily trade volume is only a small fraction of total bitcoin mined.[72]

One commenter asserts that the number of spot bitcoin exchanges worldwide far exceeds the number of venues for many commodity futures, some of which are underlying assets of existing commodity-trust ETPs. The commenter argues that, therefore, widespread global bitcoin liquidity makes bitcoin less susceptible to manipulation via trading activity conducted on a single exchange, as compared to less-liquid commodity futures that trade on a few exchanges.[73]

One commenter states that bitcoin trades on a number of exchanges around the world and that most of these exchanges can be considered isolated liquidity pools, which are more vulnerable to manipulation or security breach than the broader market.[74]

[57] *See* BZX Letter II, *supra* note 13, at 12; *see also* Petition for Review, *supra* note 4, at 11.

[58] *See* Petition for Review, *supra* note 4, at 16.

[59] *See supra* note 36.

[60] *See* Overdahl Letter, *supra* note 36, at 1–2.

[61] *Id.*

[62] The Commodity Exchange Act defines ''spoofing'' as bidding or offering for sale with the intent to cancel the bid or offer before execution. *See* 7 U.S.C. 6c(a)(5)(C).

[63] *See* Overdahl Letter, *supra* note 36, at 2, 9; *see also* Petition for Review, *supra* note 4, at 14.

[64] *See* Overdahl Letter, *supra* note 36, at 9.

[65] *See* Craig M. Lewis, ''SolidX Bitcoin Trust: A Bitcoin Exchange Traded Product'' (Feb. 13, 2017) (''Lewis Letter I''), *available at https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-1579480-131874.pdf*; Craig M. Lewis, ''Supplemental Submission to SolidX Bitcoin Trust: A Bitcoin Exchange Traded Product'' (Mar. 3, 2017) (''Lewis Letter II'', and together with Lewis Letter I the ''Lewis Letter''), *available at https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-1610031-135950.pdf.* The Lewis Letter was commissioned by SolidX Management LLC in support of the SolidX Bitcoin Trust. BZX Letter II, *supra* note 13, at 12; *see also* Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247, 16249 n.43 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (''SolidX Order''). The Commission notes that the Lewis Letter made additional assertions directed to the particular structure and pricing mechanism of another proposed bitcoin-based commodity-trust ETP, and the Commission does not address those arguments in this order.

[66] *See* Lewis Letter I, *supra* note 65, at 5–8.

[67] *See* Lewis Letter I, *supra* note 65, at 5–9; Lewis Letter II, *supra* note 65, at 2.

[68] *See* Lewis Letter I, *supra* note 65, at 6–7.

[69] *See* ARK Letter, *supra* note 35, at 5.

[70] *See* Maher Letter, *supra* note 35.

[71] *See* SIG Letter, *supra* note 36, at 6.

[72] *See* Williams Letter, *supra* note 35, at 1–2.

[73] *See* SIG Letter, *supra* note 36, at 4–5.

[74] *See* ARK Letter, *supra* note 35, at 8.

Finally, both BZX and the Overdahl Letter argue that the Commodity Futures Trading Commission's (''CFTC'') granting of registration to bitcoin swap-execution facilities (''SEFs'') means that the CFTC has addressed the issue of manipulation and determined that the underlying spot markets for bitcoin are not susceptible to manipulation.[75]

(b) Discussion

BZX has not demonstrated that the structure of the spot market for bitcoin is uniquely resistant to manipulation.

(i) Bitcoin Market Structure & Arbitrage

While two commenters questioned the effectiveness of arbitrage across bitcoin markets,[76] BZX, the Overdahl Letter, and the Lewis Letter argue that the structure of the bitcoin spot market and the availability of arbitrage will help keep worldwide bitcoin prices aligned, hindering manipulation.[77] The Overdahl Letter and Lewis Letter claim that economic analysis demonstrates that bitcoin markets are resistant to manipulation. But, as discussed below, the arguments submitted in support of this claim are incomplete and inconsistent, and are unsupported or contradicted by data.

BZX, the Overdahl Letter, and the Lewis Letter offer broad assertions that the increasing strength and resilience of the non-stop global bitcoin market place, the emergence of new market participants, and the transparency of the market have facilitated arbitrage that has caused global bitcoin exchange prices to converge.[78] But BZX, the Overdahl Letter, and the Lewis Letter offer no data or analysis regarding the actual effectiveness of arbitrage in the bitcoin spot market, either in terms of how closely prices are aligned across different bitcoin trading venues or how quickly price disparities are arbitraged away.[79] Similarly, the commenter who asserts that regulatory actions by the People's Bank of China were designed to discourage price manipulation, and have had profound and beneficial effects on bitcoin spot markets worldwide, has provided no empirical evidence to substantiate this claim.[80] In addition, the Commission notes that one commenter asserts that large arbitrage opportunities persist in bitcoin markets.[81]

While BZX cites a comment letter relating to a different proposed rule change for the proposition that price discrepancies across four selected USD-denominated bitcoin markets are generally arbitraged away in under a minute,[82] even if that limited factual assertion is true, BZX has not explained why it is relevant to the Commission's consideration of the proposal, given that (a) the worldwide spot market for bitcoin is not limited to trading against the USD, (b) market participants could engage in creation or redemption transactions with the Trust using bitcoins sourced from any trading venue or from OTC transactions, and (c) the Gemini Exchange is not among the four bitcoin trading venues observed by the commenter. Thus, this argument does not support BZX's broad assertion about the effectiveness of arbitrage across the worldwide bitcoin market.

BZX also argues that manipulation in the bitcoin market is unlikely because would-be manipulators would have to overcome the liquidity supplied by arbitrageurs, who must have funds distributed across multiple bitcoin markets to engage in arbitrage,[83] and the Overdahl Letter asserts that the manipulation of bitcoin is prohibitively expensive because manipulating the price of bitcoin on any given venue would require manipulation of the entire global bitcoin market to be effective.[84] These theoretical arguments depend on effective arbitrage existing across bitcoin markets, but, as noted above, the Commission concludes that BZX has not provided a factual basis in the record to conclude that arbitrage across bitcoin exchanges is effective.

Moreover, these arguments are inconsistent: If, in fact, market participants must disperse their capital across multiple trading venues to engage in effective arbitrage, then a market participant may be able to manipulate trading on a single trading venue by concentrating its capital and trading activity there. The Overdahl Letter's argument that manipulation of one bitcoin trading venue would require overcoming liquidity on all bitcoin venues is also inconsistent with the assertion by the Lewis Letter and another commenter that each bitcoin market is an independent entity and that, therefore, demand for liquidity does not necessarily propagate across other exchanges.[85] In addition, BZX, the Overdahl Letter, and the Lewis Letter do not adequately take into account that a market participant with a dominant ownership position would not find it prohibitively expensive to overcome the liquidity supplied by arbitrageurs and could use dominant market share to engage in manipulation.[86] And their arguments that substantial liquidity provided by the OTC market can absorb liquidity shocks and help resist manipulative activity are not supported by any data in the record on which the Commission could base a conclusion that OTC activity contributes to preventing manipulation.

BZX also argues that bitcoin markets are uniquely resistant to manipulation because the 24/7/365 trading of bitcoin means that there is no single market-close for investors to attempt to manipulate.[87] Similarly, a commenter asserts that the large number of bitcoin trading venues makes bitcoin less susceptible to manipulation than an asset, such as a commodity, trading on a single exchange or just a few exchanges.[88] In the context of the Trust, however, there is a single market and a single market-close event that an investor may have incentive to manipulate: The Gemini Auction, which the Trust would use to calculate NAV.[89] And the argument by BZX and a commenter that the transparency of a bitcoin commodity-trust ETP regarding its bitcoin holdings, as well as its dissemination of the IIV and NAV, would reduce the ability of market participants to manipulate the price of bitcoin is unpersuasive because: (a) There is no comprehensive and accurate regulatory data source reflecting bitcoin pricing or trading; (b) there is no basis to conclude that the Trust's IIV would be considered an authoritative price when several other spot prices for bitcoin are already disseminated and often differ from one another;[90] and (c)

[75] *See* BZX Letter II, *supra* note 13, at 17; Overdahl Letter, *supra* note 36, at 12. The Overdahl Letter also notes that the CFTC-regulated CME Group recently created a standardized bitcoin reference rate and a bitcoin spot price index. Overdahl Letter, *supra* note 36, at 12.

[76] *See supra* notes 69–70 and accompanying text.

[77] *See supra* notes 52–68 and accompanying text.

[78] *See supra* notes 52–68 and accompanying text.

[79] While the Overdahl Letter compares the Gemini Exchange bitcoin price to the median price and the volume-weighted average price of a group of USD-denominated bitcoin markets, such an analysis does not demonstrate whether the range of prices across those other markets is broad or narrow.

[80] *See supra* note 71 and accompanying text.

[81] *See supra* note 69 and accompanying text.

[82] *See* BZX Letter II, *supra* note 13, at 15 n.28 (citing Letter from Daniel H. Gallancy, SolidX Partners, Inc., to Brent J. Fields, Secretary, Commission (Mar. 15, 2017) (SR–NYSEArca-2016–101)).

[83] *See supra* note 56 and accompanying text.

[84] *See supra* notes 60–61 and accompanying text.

[85] *See supra* notes 67, 74 and accompanying text.

[86] *See* Section III.B.1(b)(ii), *infra* (discussing the potential for market domination).

[87] *See supra* note 57 and accompanying text.

[88] *See supra* note 73 and accompanying text.

[89] *See* Section III.E.1, *infra.* While the Lewis Letter makes a similar argument about the lack of a single market close, *see supra* note 67 and accompanying text, it does so in the context of a bitcoin ETP proposal that would not base its price on a single market auction.

[90] For example, the website *https://data.bitcoinity.org/markets/arbitrage/USD* tracks

the Trust's NAV would differ from the Gemini Auction price only if the auction price, which is publicly disseminated itself, is determined not to reflect a fair price for bitcoin.

Both the Overdahl Letter and the Lewis Letter contend that bitcoin markets are not subject to ''spoofing,'' a manipulative quoting strategy.[91] Neither letter, however, presents any data or analysis to support its claim, and there is no basis in the record to conclude whether bitcoin spot markets are subject to spoofing or other deceptive quoting practices. As a general matter, the manipulation of asset prices can occur simply through trading activity that creates a false impression of supply or demand, whether in the context of a closing auction or in the course of continuous trading, and does not require formal linkages among markets (such as consolidated quotations or routing requirements) or the complex quoting behavior associated with high-frequency trading.[92] The Commission also notes that, in contrast to the theoretical arguments in the Overdahl Letter and the Lewis Letter, TeraExchange (a market for swaps on bitcoin) arranged for participants to make manipulative ''wash'' transactions.[93]

Finally, BZX's, the Lewis Letter's, and the Overdahl Letter's discussions of the possible sources of manipulation are incomplete and do not form a basis to find that bitcoin is uniquely resistant to manipulation—or to find, by implication, that there is no need for a surveillance-sharing between an exchange listing shares of a bitcoin-based ETP and significant markets trading bitcoin or bitcoin derivatives. For example, assuming there is no inside information related to the earnings or revenue of bitcoin, there may be material nonpublic information related to: The actions of regulators with respect to bitcoin; order flow, such as plans of market participants to significantly increase or decrease their holdings in bitcoin; new sources of demand, such as new ETPs that would hold bitcoin; or the decision of a bitcoin-based ETP, a bitcoin trading venue, or a bitcoin wallet service provider with respect to how it would respond to a ''fork'' in the blockchain, which would create two different, non-interchangeable types of bitcoin.[94] Moreover, bitcoin is susceptible to the dissemination of false or misleading information regarding the types of material, nonpublic information just discussed. The Commission also notes a recent academic paper finding empirical evidence of trading in bitcoin markets based on material nonpublic information.[95]

Two additional risks that the Trust's Registration Statement acknowledges—(1) hacking and (2) malicious control of the Bitcoin Network—further undermine BZX's argument that bitcoin and bitcoin markets are inherently resistant to fraud and manipulation. The Trust's Registration Statement recognizes that bitcoin trading venues can be and have been attacked by hackers, which can affect liquidity and result in volatile prices.[96] Profit-motivated hackers can launch such attacks to manipulate bitcoin and achieve their ''intended effect of artificially raising or lowering prices.''[97] The Trust's Registration Statement also recognizes the risk of a ''malicious actor'' obtaining control of the processing power dedicated to mining on the Bitcoin Network and thus ''exerting authority'' over the Bitcoin Network.[98] Such control can be used to manipulate bitcoin pricing.[99] And there may be material nonpublic information related to hacking plans or attempts to gain control of the Bitcoin Network, and such information could be exploited through fraudulent trading.

Based on the analysis above, the Commission concludes that there is an insufficient basis in the record before it to decide that the bitcoin spot markets are inherently resistant to manipulation. This conclusion, again, is bolstered by the Trust's Registration Statement, which explains:

> Over the past four (4) years, a number of Bitcoin Exchanges have been closed due to fraud, failure or security breaches. In many of these instances, the customers of such Bitcoin Exchanges were not compensated or made whole for the partial or complete losses of their account balances in such Bitcoin Exchanges. . . . Further, the collapse of the largest Bitcoin Exchange in 2014 suggests that the failure of one component of the overall Bitcoin ecosystem can have consequences for both users of a Bitcoin Exchange and the Bitcoin industry as a whole.[100]

Additionally, the Commission notes that recent academic papers suggest that the price of bitcoin can be, and has been, manipulated through activity on

price differences between last trades on 13 bitcoin markets.

[91] *See supra* notes 62–63, 67 and accompanying text.

[92] Even if transparent order books and transaction reports on bitcoin markets would include the quoting or trading activity of a person or group attempting to manipulate the market, along with the activity of all other market participants, such information could not, by itself, definitively establish in real time which activity represented bona fide trading interest and which did not.

[93] *See In re TeraExchange LLC,* CFTC Docket No. 15–33, 2015 WL 5658082 (CFTC Sept. 24, 2015) (Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions (''TeraExchange Settlement Order'')), *available at http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfteraexchangeorder92415.pdf. See also* Kevin Dowd & Martin Hutchinson, *Bitcoin Will Bite the Dust,* 35 Cato J. 357, 374 n.13 (2015) (Bitcoin markets are subject to the ''usual market manipulation tactics.''), *available at https://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2015/5/cj-v35n2-12.pdf.*

[94] For example, as described in the Trust's Registration Statement, *supra* note 22, in the event the Bitcoin Network undergoes a ''hard fork'' into two blockchains, the Custodian and the Sponsor will determine which of the resulting blockchains to use as the basis for the assets of the Trust and, under certain circumstances, will have discretion to determine which blockchain is ''most likely to be supported by a majority of users or miners.'' *Id.* at 113. *See also* Lee Letter, *supra* note 35; Johnson Letter, *supra* note 35; Schulte Letter, *supra* note 35; Anonymous Letter V, *supra* note 35; Anonymous Letter VI, *supra* note 35. The decision of the Custodian and Sponsor to support one resulting blockchain over another could have a material effect on the relative value of the bitcoins in each of the blockchains. A fork between bitcoin and ''Bitcoin Cash'' occurred on August 1, 2017, and a fork between bitcoin and ''Bitcoin Gold'' occurred on October 24, 2017.

[95] *See* Wenjun Feng, Yiming Wang & Zhengjun Zhang, *Informed Trading in the Bitcoin Market,* Fin. Res. Letters, Dec. 2, 2017, *available at https://www.sciencedirect.com/science/article/pii/S1544612317306992.*

[96] Registration Statement, *supra* note 22, at 21–23, 29, 60–61.

[97] Amir Feder, Neil Gandal, J.T. Hamrick, and Tyler Moore, *The Impact of DDoS and Other Security Shocks on Bitcoin Currency Exchanges: Evidence From Mt. Gox,* Journal of Cybersecurity (Jan. 31, 2018), at 137 (explaining that a profit-motivated hacker can manipulate bitcoin prices up or down by hacking larger trading venues while trading on smaller trading venues, and thereby ''create[ ] an unfair financial advantage for the perpetrator at the expense of ordinary participants''), *available at https://academic.oup.com/cybersecurity/article/3/2/137/4831474; see also* David Groshoff, *Kickstarter My Heart: Extraordinary Popular Delusions and the Madness of Crowdfunding Constraints and Bitcoin Bubbles,* 5 Wm. Mary Bus. L. Rev. 489, 519 (2014).

[98] Registration Statement, *supra* note 22, at 17, 56. The Registration Statement notes that obtaining control in excess of 50% of the processing power on the Bitcoin network is sufficient, and that ''there are some academics and market participants who believe the applicable threshold required to exert authority over the Bitcoin Network could be less than fifty (50) percent, which would increase the chances of a malicious actor exerting authority over the Bitcoin Network.'' *Id.* at 17.

[99] Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System,* Bitcoin.org (Oct. 31, 2008), at 4 (malicious actor could exploit his control of the Bitcoin Network by ''using it to generate new coins''), *available at https://bitcoin.org/bitcoin.pdf; see also* Kevin Dowd & Martin Hutchinson, *Bitcoin Will Bite the Dust,* 35 Cato J. 357, 372–74 (2015), *available at https://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2015/5/cj-v35n2-12.pdf;* Sanya Samtani and Varun Baliga, *On Monopolistic Practices in Bitcoin: A Coded Solution,* 11 Indian J. L. & Tech. 106, 107–08 (2015), *available at http://ijlt.in/wp-content/uploads/2015/09/Sanya-Samtani-and-Varun-Baliga-5.pdf* (malicious actor could achieve ''devaluation'' of bitcoin).

[100] Registration Statement, *supra* note 22, at 23.

bitcoin trading venues. One recent academic paper examined whether the growth of the circulating supply of Tether (a cryptocurrency that claims to be backed by the U.S. dollar) through new issuances ''is primarily driven by investor demand, or is supplied to investors as a scheme to profit from pushing cryptocurrency prices up.'' [101] Through statistical analysis of the blockchains of bitcoin and Tether, the authors conclude that entities associated with a specific cryptocurrency trading venue—which the authors link to Tether's founders—''use Tether to purchase bitcoin when prices are falling''; that ''[s]uch price supporting activities are successful, as Bitcoin prices rise after the period of intervention,'' with ''substantial aggregate price effects'' across bitcoin trading platforms; and that this activity ''occurs more aggressively right below salient round-number price thresholds where the price support might be most effective.'' [102] The paper finds that the periods of strongest Tether flows are ''associated with 50% of Bitcoin compounded return'' from March 1, 2017, to March 31, 2018.[103] Overall, the authors conclude that their findings ''provide substantial support for the view that price manipulation may be behind substantial distortive effects in cryptocurrencies'' and ''suggest that external capital market surveillance and monitoring may be necessary to obtain a market that is truly free.'' [104] The Commission also notes another recent academic paper, which concludes that there was fraudulent and manipulative activity on a single bitcoin trading venue.[105]

These studies supplement the Commission's conclusion that there is an insufficient basis in the record before it to decide that the bitcoin spot markets are inherently resistant to manipulation.[106] Even without these studies, however, the Commission would still find that BZX has not demonstrated that the structure of the spot market for bitcoin is uniquely resistant to manipulation. Moreover, even if the record supported the proposition that some features of bitcoin and bitcoin markets mitigate some types of manipulation to some degree, the Commission concludes that such mitigation is insufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by surveillance-sharing agreements with significant, regulated markets.[107]

(ii) Market Domination

While BZX argues that it is unlikely that any one actor could obtain a dominant market share,[108] BZX does not address the risk of pre-existing dominant positions, a risk that the Lewis Letter acknowledges.[109] Similarly, while the Overdahl Letter maintains that the existence of a dominant bitcoin exchange would not imply the existence of a dominant ownership position, and that the existence of a market with a large share of trading volume would make it more difficult for a market participant to obtain a dominant ownership position,[110] the Overdahl Letter does not address the risk of pre-existing dominant positions in bitcoin. The Lewis Letter, however, specifically acknowledges this risk, noting: ''One of the risks associated with bitcoin is the possibility that a single investor or a small group acting in collusion could own a dominant share of the available bitcoin.'' [111] The Lewis Letter goes on to explain that ''[i]t is possible, and in fact, reasonably likely that a small group of early bitcoin adopters hold a significant proportion of the bitcoin that has thus far been created.'' [112] Additionally, another commenter contends that the majority of bitcoin is held by a few owners, estimating that 50% of bitcoins are held by fewer than 1,000 people.[113]

The Lewis Letter argues that the nature of the spot bitcoin market and the arbitrage mechanism should reduce the risk of manipulation through ownership of a dominant market share,[114] but this argument addresses whether market participants might acquire a dominant share of bitcoin ownership by trading in bitcoin markets

[101] Griffin, John M. and Amin Shams, *Is Bitcoin Really Un-Tethered* (June 13, 2018) (manuscript at 33) (''Griffin-Shams Paper''), *available at https://ssrn.com/abstract_id=3195066.*

[102] *Id.*

[103] *See id.* at 23–24.

[104] *Id.* at 33; *see also id.* at 1 (''[P]urchases with Tether are timed following market downturns and result in sizable increases in Bitcoin prices,'' thus ''Tether is used to provide price support and manipulate cryptocurrency prices.''); *id.* at 2 (Bitcoin exchanges ''largely operate outside the purview of financial regulators'' and ''[t]rading on unregulated exchanges . . . could leave cryptocurrencies vulnerable to gaming and manipulation.''); *id.* at 3 (''[T]he coordinated supply of Tether creates an opportunity to manipulate cryptocurrencies.''); *id.* at 6 (''Tether seems to be used both to stabilize and manipulate Bitcoin prices.'').

[105] *See* Neil Gandal, J.T. Hamrick, Tyler Moore & Tali Oberman, *Price Manipulation in the Bitcoin Ecosystem,* J. Monetary Econ., Jan. 2, 2018, *available at https://doi.org/10.1016/j.jmoneco.2017.12.004.* According to the authors of this paper, the fraudulent and manipulative activity led to an average of approximately a four to five percent rise in the bitcoin/USD exchange rate in 2013 on days when that activity occurred, compared to a slight decline on days without such activity. *Id.* at 2.

[106] While another recent academic paper examines the relationship between bitcoin and Tether and claims ''not [to] find any evidence suggesting that Tether issuances cause subsequent increases in Bitcoin returns,'' W.C. Wei, *The Impact of Tether Grants on Bitcoin* (May 9, 2018) (manuscript at 6) (''Wei Paper''), *available at https://ssrn.com/abstract=3175876,* the Commission believes that this paper's analysis reflects significant limitations in the study design and is not as persuasive as the empirical papers cited herein that conclude there has been fraud and manipulative activity in bitcoin markets, including the Griffin-Shams Paper. First, the paper uses only daily traded price and aggregate trading volume, whereas the Griffin-Shams Paper, *supra* note 101, performs a more granular statistical analysis of blockchain transactions and finds that the largest effects of Tether issuances on bitcoin prices occur between three and twelve hours after a Tether issuance. Second, the paper uses a single vector autoregression specification with 52 coefficients, but without any robustness checks. And third, while the paper concludes that Tether issuances increase bitcoin trading volume but do not affect bitcoin returns, the paper does not include any discussion of or control for collinearity between changes in bitcoin trading volume and prices. Thus, the Commission does not believe that the Wei Paper supports a conclusion that bitcoin is inherently resistant to manipulation.

[107] Even if BZX's argument is that bitcoin and bitcoin markets are ''not readily susceptible to manipulation,'' BZX has not demonstrated that contention. Indeed, the Commission concludes, consistent with its past practice, that surveillance-sharing agreements with significant, regulated markets ensure that commodity-trust ETPs are ''*less readily susceptible to manipulation.*'' Exchange Act Release No. 35518 (Mar. 21, 1995), 60 FR 15804, 15807 (Mar. 27, 1995) (SR–Amex–94–30); *accord* Exchange Act Release No. 82538 (Jan. 19, 2018), 83 FR 3807, 3810 (Jan. 26, 2018) (SR–CboeBZX–2018–005) (''The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation.'').

[108] *See supra* note 57 and accompanying text.

[109] *See supra* note 68 and accompanying text.

[110] *See supra* note 64 and accompanying text.

[111] Lewis Letter I, *supra* note 65, at 6. The Lewis Letter states that there is ''no compelling evidence'' to suggest that any single investor or group has acquired a dominant position in bitcoin, but its recognition that ''there is no registry showing which individuals or entities own bitcoin or the quantity owned,'' and its citation of ''media estimates'' regarding the holdings of certain individuals, demonstrates that there is some risk of a person or group holding or acquiring a significant proportion of bitcoins and that this risk should not be dismissed. *Id.* at 6 & n.7.

[112] Lewis Letter I, *supra* note 65, at 6 (citing Amendment No. 4 to Form S–1 of SolidX Bitcoin Trust at 16). A recent letter from Commission staff notes such concerns of ''potential manipulation in the underlying cryptocurrency markets.'' *Engaging on Fund Innovation & Cryptocurrency-Related Holdings,* 2018 WL 480851, at *1–2 (SEC No Action Letter Jan. 18, 2018) (citing David Z. Morris, *Could Bitcoin's 'Whales' Manipulate the Market?,* Fortune (Dec. 10, 2017)). *See also* Olga Kharif, The Bitcoin Whales: 1,000 People Who Own 40 Percent of the Market, Bloomberg Businessweek (Dec. 8, 2017), *available at https://www.bloomberg.com/news/articles/2017-12-08/the-bitcoin-whales-1-000-people-who-own-40-percent-of-the-market.*

[113] *See supra* note 72 and accompanying text.

[114] *See supra* note 68 and accompanying text.

and does not address the potential market effect of large bitcoin positions held by early adopters. Multiple academic studies have found the existence of concentrated holdings in an asset presents a meaningful risk of manipulation.[115] Whether a dominant position came from being an early adopter of bitcoin or from trading activity would not alter the Commission's view that a person or group with a dominant position may be capable of engaging in manipulative activity. The Commission thus cannot, on the record before it, conclude that bitcoin markets are uniquely resistant to manipulation.

(iii) Prior Regulatory Actions Regarding Bitcoin

Although commenters suggest that the CFTC has conclusively determined that bitcoin markets are not susceptible to manipulation because it has permitted the registration of bitcoin swap execution facilities as consistent with the Commodity Exchange Act (''CEA''),[116] the CFTC has made no such sweeping finding as to bitcoin or bitcoin spot markets either in permitting the registration of those swap execution facilities or in more recently permitting the self-certification by Chicago Mercantile Exchange Inc. (''CME'') and Cboe Futures Exchange, LLC (''CFE'') of bitcoin futures contracts. The Commission notes that CFTC Chairman Giancarlo has described ''heightened review'' of the CME and CFE self-certifications as addressing the narrower question of whether the particular bitcoin futures products and cash-settlement processes—under the specific terms proposed by those two futures exchanges—were ''readily susceptible to manipulation.'' [117] And the CFTC stated that the self-certification process for bitcoin futures contracts ''does NOT provide for . . . value judgments about the underlying spot market,'' and U.S. law ''does not provide for direct, comprehensive Federal oversight of underlying Bitcoin or virtual currency spot markets.'' [118]

Moreover, the CFTC's statutory authority to review new derivative products differs substantially from the Commission's authority, under Section 19(b) of the Exchange Act,[119] with respect to the review of proposed rule changes by SROs. While there are ''limited grounds'' for the CFTC to take affirmative action to stay new product self-certifications,[120] the Commission must, to approve a proposed rule change, make an affirmative finding that the proposed rule change is consistent with the Exchange Act, with the burden of demonstrating consistency with the Exchange Act resting with the SRO proposing the rule change.[121] The Commission is also mindful that the primarily institutional markets that the CFTC supervises are materially different from the securities markets in which many retail investors participate directly. The CFTC acknowledges that ''[m]ost participants in the futures markets are commercial or institutional commodities producers or consumers'' and ''[t]rading commodity futures and options is a volatile, complex and risky venture that is rarely suitable for individual investors or 'retail customers.' '' [122]

Accordingly, the Commission cannot conclude that actions taken to date by the CFTC determine whether the proposed bitcoin ETP is consistent with the applicable requirements of the Exchange Act, and the Commission must reach its own decision, under its own statutory mandate, to determine whether the proposal is designed to ''protect investors and the public interest.'' [123]

2. Manipulation of the Gemini Exchange and the Gemini Auction

(a) Summary of Comments Received

BZX acknowledges in its comment letter that less-liquid markets, such as the market for bitcoin, may be more easily manipulated, but claims that these concerns are mitigated with respect to the Shares and the trading on the Gemini Exchange. BZX asserts that the Gemini Auction price is based on an extremely similar mechanism to the one leveraged for BZX's own Opening and Closing Auctions and allows full and transparent participation from all Gemini Exchange participants in the price discovery process. BZX states that the auction process leverages mechanics that have proven over the years to be robust and effective on BZX and other national listing exchanges in both liquid and illiquid securities alike. BZX argues that, because the time of the Gemini Auction coincides with BZX's Closing Auction, efficient real-time arbitrage between the closing price of the Trust and the Gemini Auction price will be prevalent and will lead to resilient and effective pricing of both the Trust and the underlying bitcoin asset, leading to convergence between the Trust's closing price and its NAV.[124] BZX asserts that the Gemini Auction price typically deviates very little from the prevailing price on other bitcoin exchanges, and BZX presents statistics purporting to show that this price is consistent with the prices of other U.S.-based exchanges.[125]

BZX asserts that the Gemini Auction price is uniquely resistant to manipulation and that it more accurately reflects the bitcoin price than any other individual event or cross-market snapshot, because the largest bitcoin transactions each day usually occur via the Gemini Auction. BZX also claims that volumes transacted in the Gemini Auction are generally more than 50% larger than the second-largest trade in the world, drawing an average daily volume of 1,200 bitcoins compared to approximately 800 bitcoins.[126]

In addition, BZX asserts that the Gemini Auction occurs at a scheduled time each day to maximize participation and price formation, while other liquidity events are often unpredictable and irregular.[127] Another commenter claims that the Gemini Auction also concentrates liquidity and trading volume at a single moment each day.[128]

BZX further asserts that, from its launch through May 12, 2017, the Gemini Auction price on business days has deviated from the Gemini midpoint price (the midrange of the highest bid

[115] *See, e.g.,* Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,* J. Commodity Mkt., Mar. 2017, at 1 (describing manipulation in commodities markets); Franklin Allen, Lubomir P. Litov & Jianping Mei, *Large Investors, Price Manipulation, and Limits to Arbitrage: An Anatomy of Market Corners,* 10 Rev. Finance 645 (2006) (describing manipulation in equity and commodities markets).

[116] *See supra* note 75.

[117] *See* Written Testimony of J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission, Before the Senate Banking Committee at text accompanying n.17 (Feb. 6, 2018) (''Giancarlo Testimony''), *available at https://cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo37. See also infra* notes 285–288 (discussing role of CFTC with respect to underlying bitcoin spot markets).

[118] CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets (Jan. 4, 2018) (''CFTC Backgrounder''), at 1, 2, *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/backgrounder_virtualcurrency01.pdf. See also infra* note 288.

[119] 15 U.S.C. 78s(b).

[120] *See* CFTC Backgrounder, *supra* note 118, at 2.

[121] *See supra* notes 8, 10–12 and accompanying text. *Compare* 7 U.S.C. 7a-2(c) *and* 17 CFR 40.6 *with* 15 U.S.C. 78(b)(1) *and* 17 CFR 240.19b-4.

[122] Futures Market Basics, CFTC, *available at http://www.cftc.gov/ConsumerProtection/EducationCenter/FuturesMarketBasics/index.htm.* Furthermore, the record does not contain evidence about whether CME or CFE can, in practice, actually obtain trading information from bitcoin exchanges, and thus whether the CFTC can obtain such information from CME or CFE.

[123] 15 U.S.C. 78f(b)(5).

[124] *See* BZX Letter I, *supra* note 35, at 8; BZX Letter II, *supra* note 13, 10–11. *See also* SIG Letter, *supra* note 36, at 2–6; C&C Letter, *supra* note 36, at 1.

[125] *See* BZX Letter I, *supra* note 35, at 8–9.

[126] *See* BZX Letter II, *supra* note 13, at 19–20.

[127] *See id.* at 20.

[128] *See* Overdahl Letter, *supra* note 36, at 11.

and lowest offer prices) by 0.22% on average and 0.71% at most, that it has deviated from the median price of all U.S.-based bitcoin exchanges by 0.52% on average, and that it has deviated from the median price of all global USD-denominated bitcoin exchanges by 0.70% on average.[129] BZX also claims that the Gemini Exchange is regularly near the top of bitcoin exchanges in terms of market-quality metrics for overall trading.[130]

The Overdahl Letter asserts that the Gemini Auction price is reliable in that it generally reflects bitcoin traded at other U.S.-based bitcoin exchanges and bitcoin traded at USD-based exchanges globally and that, when noticeable discrepancies appear, arbitrage mechanisms quickly force prices back into alignment.[131] The Overdahl Letter provides some update to the statistics provided by BZX and states that, from September 21, 2016 (the launch of the Gemini Auction), to March 1, 2017, the average daily deviation of the Gemini Auction price from the median 4:00 p.m. price of all U.S.-based bitcoin exchanges was 0.0058 percent and the average absolute deviation (that is, the average absolute value of deviations) was 0.1804 percent. The Overdahl Letter also states that, during the same period, the average daily deviation of the Gemini Auction price from the median 4:00 p.m. price of all global USD-denominated bitcoin exchanges was 0.0489 percent with an average absolute deviation of 0.2398 percent.[132]

The Overdahl Letter also contends that the surveillance agreement between the Gemini Exchange and BZX allows for continuous monitoring of trading activity to detect and deter manipulation of the Gemini Auction price and that BZX's rules are reasonably designed to prevent fraudulent and manipulative acts and practices with respect to determining the NAV of the Trust Shares.[133] The Overdahl Letter further claims that the Gemini Auction is designed to not be readily susceptible to manipulation because it includes pre-trading transparency, which allows for full and transparent participation by all participants, uses a mechanism similar to that used by other exchanges in setting opening and closing prices, and concentrates liquidity and trading volume in a single moment each day.[134] Regarding the calculation of NAV, the Overdahl Letter also argues that the Trust's valuation procedures greatly reduce the risk that a malicious actor could influence the NAV of the Trust by manipulating the Gemini Auction, because alternative means can be used to value the Trust's bitcoin if the Trust sponsor determines that the Gemini Auction price does not reflect the fair value of bitcoin.[135]

Several commenters claim that the Gemini Exchange has low trading volumes,[136] and one commenter claims that, of all the exchanges, Gemini has the worst pricing.[137] Another commenter asserts that the Gemini Exchange has relatively low liquidity and trade volume and that there is a significant risk that the nominal ETP share price will be manipulated by relatively small trades that manipulate the bitcoin price at that exchange.[138] This commenter states that, while U.S.-based bitcoin exchanges are subjected to stricter regulations and auditing for the holding of client accounts, the trading itself seems to occur in a regulatory vacuum and seems impossible to audit effectively.[139] This commenter expresses concerns regarding the Gemini Exchange Spot Price, noting that the nominal price of the Shares under the proposal is supposed to be tied to the market price of bitcoins at the Gemini Exchange, which is closely tied to the ETP proponents.[140]

One commenter claims that most daily trading volume is conducted on poorly capitalized, unregulated exchanges located outside the United States and that these non-U.S. exchanges and their practices significantly influence the price discovery process.[141] Another commenter states that the biggest and most influential bitcoin exchange is located outside U.S. jurisdiction.[142]

One commenter states that, since 2013, the price of bitcoin has been defined mostly by the major Chinese exchanges, whose volumes dwarf those of exchanges outside China, and that the price of bitcoin is defined entirely by speculation, without any ties to fundamentals.[143] Another commenter observes that Chinese markets drive much of the volume in the bitcoin markets.[144]

One commenter states that it makes sense to value the proposed ETP based on the Gemini Auction because doing so would guarantee sufficient liquidity and because other bitcoin trading venues are not subject to the same level of oversight as the Gemini Exchange.[145] Another commenter asserts that the Gemini Auction is not a robust mechanism for price discovery because Gemini's fee structure would make self-trading or collusive wash trades between accounts profitable, which would artificially inflate the volume of the Gemini Auction.[146]

One commenter states that the Gemini Auction could be an improvement over other bitcoin pricing mechanisms, but asserts that the Gemini Auction has not improved volume.[147] The commenter observes that the Gemini Auction data show that traders in the auction are taking advantage of the discounted auction price. The commenter states that the daily two-sided Gemini Auction process was designed to maximize price discovery and reduce price volatility that could be the result of momentum pricing, but asks what measures have been put in place to address traders who take advantage of the discounted auction price. The commenter also states that, while other financial products sometimes have auctions to determine price, an auction on a stock exchange does not require money to be deposited in advance with the exchange to be in the auction. The commenter states that, by contrast, the Gemini Exchange requires dollars or bitcoin to be deposited before participation. The commenter believes that this is a problem because the Gemini Auction is limited and has failed on at least two occasions.[148]

Other commenters believe that the Gemini Exchange conducts sufficient volume to support the Winklevoss Bitcoin Trust. One commenter states that trading volume on the Gemini Exchange is sufficient and that

[129] *See* BZX Letter II, *supra* note 13, at 20.

[130] *Id.*

[131] *See* Overdahl Letter, *supra* note 36, at 1.

[132] *See id.* at 4.

[133] *See id.* at 2. Specifically, according to the Overdahl Letter, the type of potential manipulation most relevant for determining the NAV of the Trust's Shares would be a malicious actor attempting to use the Gemini Auction price to influence the NAV of the Trust. *See id.* at 11.

[134] *See* Overdahl Letter, *supra* note 36, at 11.

[135] *See id.* at 2.

[136] *See, e.g.,* Maher Letter, *supra* note 35; Stolfi Letter I, *supra* note 35; Anonymous Letter III, *supra* note 35.

[137] *See* Anonymous Letter III, *supra* note 35.

[138] *See* Stolfi Letter I, *supra* note 35; *see also* Stolfi Letter II, *supra* note 35 (concluding that the Gemini Auction volume has shown a decreasing trend since its inception and is now under $1 million USD during work days, and considerably less during weekends, and that "[w]ith such low volume, it seems possible to manipulate the NAV value by entering suitable bids or asks in the auction").

[139] *See* Stolfi Letter II, *supra* note 35.

[140] *See* Stolfi Letter I, *supra* note 35.

[141] *See* Williams Letter, *supra* note 35, at 2.

[142] *See* Anonymous Letter V, *supra* note 35.

[143] *See* Stolfi Letter II, *supra* note 35.

[144] *See* ARK Letter, *supra* note 35, at 5.

[145] *See* Delehanty Letter, *supra* note 35 (but noting that using the Gemini Auction to value the ETP, which is also the sponsor of the ETP, creates a potential conflict of interest).

[146] *See* Anonymous Letter VIII, *supra* note 35.

[147] *See* Anonymous Letter III, *supra* note 35.

[148] *See id.*

manipulation of these Shares, while possible, would equally be possible for other exchange-traded funds.[149] Another commenter asserts that trading volume in the recent Gemini bitcoin daily auctions seemed ''to be of reasonable size.'' [150]

One commenter claims that there are more robust ways to value the Trust's holdings than using the spot price of a single exchange, such as the Gemini Exchange.[151] The commenter also states that the Gemini Exchange typically processes less than 10% of the total volume in the bitcoin/USD pair and states that an index of the most reliable exchanges should be constructed to value the Trust's holdings. The commenter questions whether using only the Gemini Exchange's spot price could serve to incentivize Authorized Participants and other market participants to direct traffic and flow to Gemini, at the expense of best execution.[152]

Another commenter takes a different view on the merits of single- versus multiple-price sources. This commenter observes that bitcoin spot prices diverge across exchanges due to various factors and that some exchanges may suffer from lack of oversight and a lack of transparency or fairness. The commenter claims that these facts strengthen the case for an investment product that does not rely on the spot price of less-credible exchanges to value its holdings and instead relies on the spot price on the Gemini Exchange, which is subject to substantive regulation of its exchange activity and custody of assets by the NYSDFS. This commenter also states that, while leveraged trading on some other exchanges has historically sparked excessive price volatility and instability, Gemini does not offer such products and would be able to serve as a trusted, regulated spot exchange for institutional market participants driving the arbitrage mechanism that ensures efficient pricing between the spot price and the Shares. The commenter claims that the Gemini Exchange has the potential for more-robust price discovery as liquidity is concentrated on that exchange.[153]

One commenter states that there is an inherent trade-off to using one exchange versus an average of several exchanges, some of which may be less scrupulous. The commenter acknowledges that manipulation is a legitimate concern, but notes that it is not uncommon to see a very small number of physical trades determine the base price for a much larger paper market.[154]

Other commenters view the risk of manipulation as more significant. One commenter states that it would be surprising if manipulative practices that would be illegal in other financial markets did not occur on certain bitcoin exchanges that experience lack of regulations and oversight, since these practices would be easy to implement, impossible to detect, perfectly legal under the rules applicable to those bitcoin exchanges, and extremely lucrative.[155] This commenter also states that the Gemini Auction closing volumes have been low and have shown a slight decreasing trend since the inception of the Gemini Auction. The commenter states that, with low volumes, it seems possible to manipulate the NAV by entering suitable bids or asks in the Gemini Auction.[156] Another commenter agrees that bitcoin traders can manipulate trading on the Gemini Exchange because of its low trading volumes and notes that the Trust's documentation states that momentum pricing of bitcoin has resulted, and may continue to result, in speculation regarding future appreciation in the value of bitcoin, making the price of bitcoin more volatile.[157] The commenter states that the value of bitcoin may therefore be more likely to fluctuate due to changing investor confidence in future appreciation in the Gemini Auction price, which could adversely affect an investment in the Shares.[158] According to another commenter, in this unregulated environment, price manipulation and front-running of large buy or sell orders can happen and well-connected customers can gain preferential treatment in order execution.[159]

(b) Discussion

For the reasons discussed below, the Commission concludes that BZX has not demonstrated that the Gemini Exchange and the Gemini Auction are resistant to manipulation. Commenters disagree about whether the Gemini Exchange and the Gemini Auction are susceptible to manipulation. BZX promotes the Gemini Exchange as one of the top three bitcoin exchanges in the United States,[160] and some commenters believe that the Gemini Exchange conducts sufficient volume to support the Winklevoss Bitcoin Trust.[161] Other commenters, however, question these assertions, some noting that the majority of bitcoin trading, including trading denominated in USD, occurs on unregulated exchanges outside the United States,[162] and one suggesting that the low liquidity and trading volume on the Gemini Exchange create a significant risk that the ETP share price could be manipulated by relatively small trades.[163]

While BZX claims in its May 2017 comment letter that the average volume of the Gemini Auction is 1,200 bitcoins,[164] calculations based on public data from the Gemini Exchange website show that more recent Gemini Auction volume has been significantly lower. As of March 31, 2018, the average number of bitcoins traded in the Gemini Auction on a business day was just 178.07 bitcoins over the previous month, 122.20 bitcoins over the previous three months, and 138.46 bitcoins over the previous six months. Median volume figures for the same periods are even lower: 146.51 bitcoins, 85.09 bitcoins, and 90.42 bitcoins, respectively. Although the Gemini Exchange conducts the Gemini Auction on each calendar day, to better represent auction volume for days on which creations or redemptions might occur in the Shares, these calculations of average and median auction volume exclude auctions that occurred on weekends and days on which the U.S. equities markets were closed. Days on which no Gemini Auction price was reached were also excluded to avoid skewing data.

The volume of the Gemini Auction is of particular relevance to BZX's proposal, and to the susceptibility of the ETP shares to manipulation, because the Gemini Auction price is used to determine the NAV of the Trust, which is publicly disseminated and which is the price used for creation and redemption transactions. Taking into account the recent low auction volume calculated above, which is a small fraction of the 1,000 bitcoins in a creation or redemption basket,[165] the Commission concludes that there is a substantial risk that either (1) any creation and redemption activity in the

[149] *See* Anonymous Letter I, *supra* note 35.

[150] *See* Delehanty Letter, *supra* note 35.

[151] *See* ARK Letter, *supra* note 35, at 7–8.

[152] *See id.* at 8–9.

[153] *See* Circle Letter, *supra* note 35, at 2.

[154] *See* Delehanty Letter, *supra* note 35.

[155] *See* Stolfi Letter II, *supra* note 35.

[156] *See id.*

[157] *See* Anonymous Letter III, *supra* note 35.

[158] *See id.*

[159] *See* Williams Letter, *supra* note 35, at 2.

[160] *See supra* note 130 and accompanying text.

[161] *See supra* notes 149–150 and accompanying text.

[162] *See supra* notes 141–144 and accompanying text.

[163] *See supra* note 138 and accompanying text.

[164] *See* BZX Letter II, *supra* note 13, at 20.

[165] *See* Amendment No. 2, *supra* note 1 (setting size of creation unit at 100,000 shares, with the value of a share at 0.01 bitcoin, making content of a creation unit 1,000 bitcoins).

Trust would have a substantial effect on the Trust's pricing or (2) Authorized Participants would be forced to source bitcoins on other venues where prices may or may not be aligned with that of the Gemini Auction, limiting the purported effectiveness of arbitrage.

Additionally, given the current disparity between the Gemini Auction volume and the trading volume that would equal a creation unit—and the resulting likelihood that creation or redemption activity would substantially affect the Gemini Auction price—BZX has not shown that the ability of the Trust to use other criteria to value the Trust's bitcoins in ''extraordinary circumstances'' [166] adequately addresses the risk that creations and redemptions, or manipulative activity such as front running, may affect the Gemini Auction price on an ordinary day. In light of the risks that creation and redemption activity may substantially affect the Gemini Auction price—and that the use of other valuation criteria may fail to address the effects of creation and redemption activity or of manipulative activity—the Commission cannot conclude that the bitcoin pricing mechanism of the Trust is uniquely resistant to manipulation.

Further, given that recent Gemini Auction volumes are inadequate to support creation or redemption activity, BZX has not sufficiently supported its claim that the design and mechanisms of the Gemini Auction would allow for efficient arbitrage between the Shares and the underlying bitcoin. Similarly, the statistics offered by BZX and the Overdahl Letter to argue that the Gemini Auction creates a price closely aligned with U.S.-based and global USD-denominated bitcoin exchanges do not establish that bitcoin trading on the Gemini Exchange is uniquely resistant to manipulation because these statistics do not reflect, and cannot predict, the dynamics of trading on the Gemini Exchange if the Gemini Auction were used as the basis to calculate NAV for the Trust. Given the small size of the Gemini Auction relative to the size of a creation unit, the launch of the proposed ETP would be likely to fundamentally affect supply and demand in the Gemini Auction, and the use of the Gemini Auction price to calculate NAV would introduce a significant incentive to manipulate the Gemini Auction that does not currently exist. The Commission cannot therefore conclude that arbitrage would render the Shares uniquely resistant to manipulation.

[166] *See supra* note 30.

The Trust's Registration Statement acknowledges that the reliance on a single bitcoin exchange has risks to shareholders in the Trust: ''Trading on a single Bitcoin Exchange may result in less favorable prices and decreased liquidity for the Trust and, therefore, could have an adverse effect on the Trust and Shareholders.'' [167] Moreover, although commenters have suggested that approval of the proposal would naturally lead to greater activity in the Gemini Auction,[168] such speculation does not provide an adequate basis to decide that future Gemini Auction volume would be sufficient to prevent manipulation of the Gemini Auction from affecting the NAV of the Trust, and BZX has not explained how the favorable market quality metrics it attributes to the Gemini Exchange would be affected if trading interest at the Gemini Auction were dominated by creation and redemption activity.[169] Therefore, again, the Commission cannot conclude that the pricing mechanism of the Trust would render the Shares uniquely resistant to manipulation.

C. The Availability of ''Traditional Means'' To Detect and Deter Fraud and Manipulation

BZX has not demonstrated, given the current absence of a surveillance-sharing agreement with a regulated bitcoin market of significant size, that the alternative surveillance procedures BZX purports to identify—including BZX's assertion that it would be able to obtain certain information regarding trading in the Shares and in the underlying bitcoin or any bitcoin derivative—would be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices.

1. Summary of Comments Received

BZX asserts that the March Disapproval Order failed to appreciate that the proposal provides ''traditional means of identifying and deterring fraud and manipulation'' that meet the criteria that the Commission has utilized in approving other commodity-trust ETPs.[170] BZX states that a particular area of surveillance focus for the Commission in prior commodity-trust ETP approval orders was the implementation of exchange rules requiring market makers in the commodity-trust ETP shares to disclose their dealings in the underlying commodities. BZX contends that analogous requirements are included in this proposal, with BZX Rule 14.11(e)(4) mandating that market makers in the Shares disclose all of their commodity trading accounts, disclose all trading in bitcoin or bitcoin derivatives, and make available all related books and records.[171] BZX also contends that, in the prior commodity-trust ETP approval orders, the Commission also reviewed the adequacy of the ETP listing exchange's rules and procedures for surveillance of trading activity in the ETP shares. According to BZX, similar surveillance rules and procedures are in place at BZX regarding the proposed bitcoin ETP, as the listing exchange can obtain information regarding trading in Shares from Intermarket Surveillance Group members and affiliate members, as well as trading information available on the blockchain and information available through a surveillance-sharing agreement with the Gemini Exchange.[172]

The Overdahl Letter also contends that BZX's rules are reasonably designed to prevent fraudulent and manipulative acts and practices with respect to determining the NAV of the Trust Shares.[173] Specifically, according to the Overdahl Letter, the type of potential manipulation most relevant for determining the NAV of the Trust's Shares would be a malicious actor attempting to use the Gemini Auction price to influence the NAV of the Trust. The Overdahl Letter also asserts that, in addition to BZX's surveillance procedures and anti-manipulation rules, penalties for engaging in manipulative conduct serve as a deterrent against manipulation of the Gemini Auction price and the resulting Trust's NAV. The Overdahl Letter states that, although a penalty is applied after a manipulation occurs or is attempted, penalties are nonetheless a useful tool for deterring, and therefore preventing, manipulation.[174]

Finally, one commenter claims that the March Disapproval Order reflects the Commission's ''unspoken but obvious concern'' with bitcoin, and argues that this issue can be cured by having the bitcoin exchange sign a memorandum of understanding with the Commission to share information.[175]

[167] Registration Statement, *supra* note 22, at 22.

[168] *See* Maher Letter, *supra* note 35; Overdahl Letter, *supra* note 36, at 3; SIG Letter, *supra* note 36, at 8.

[169] *See supra* note 130 and accompanying text.

[170] *See* BZX Letter II, *supra* note 13, at 22, 26.

[171] *See id.* at 23.

[172] *See id.* The surveillance-sharing agreement between BZX and the Gemini Exchange is discussed in Section III.E.1, *infra.*

[173] *See* Overdahl Letter, *supra* note 36, at 2.

[174] *See id.* at 11.

[175] *See* Convergex Letter, *supra* note 36, at 2.

2. Discussion

The Commission concludes that BZX has not demonstrated—given the current absence of a surveillance-sharing agreement with a regulated bitcoin market of significant size—that the alternative surveillance procedures discussed above would, by themselves, be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices.[176]

While BZX would, pursuant to its listing rules, be able to obtain certain information regarding trading in the Shares and in the underlying bitcoin or any bitcoin derivative through registered market makers,[177] this trade information would be limited to the activities of members who were registered with BZX as market makers in the Shares and would not encompass all BZX market participants.[178] Furthermore, neither BZX's ability to surveil trading in the Shares nor its ability to share surveillance information with other securities exchanges trading the Shares would give BZX insight into the activity and identity of market participants trading in the underlying bitcoin in the OTC market or on other bitcoin trading venues.

Additionally, while BZX represents that it can obtain information about bitcoin trading made publicly available through the bitcoin blockchain,[179] the blockchain identifies parties to a transaction only by a pseudonymous public-key address, and it does not distinguish bitcoin trading activity from other transfers of bitcoin (*e.g.,* for remittances, purchases of goods or services, or other purposes). Therefore, the public blockchain ledger, even in combination with the other monitoring abilities BZX identifies, does not provide comprehensive customer trading or identity information, which is particularly important here because pseudonymous bitcoin account holding means, among other things, that the number of accounts or number of trades would not reveal whether a person or group has a dominant ownership position in bitcoin, or is using or attempting to use a dominant ownership position to manipulate bitcoin pricing.[180]

One commenter asserts that existing ''penalties for engaging in manipulative conduct'' can serve to deter manipulation of the Gemini Auction price and, therefore, the Trust's NAV.[181] However, the Commission concludes that, based on the facts and circumstances of this proposal, the ability of relevant authorities to potentially sanction manipulative activity after the fact—if it is discovered—is insufficient, by itself, to meet BZX's obligation to have rules ''designed to prevent fraudulent and manipulative acts and practices.'' [182] Before penalties can be imposed for engaging in manipulative conduct, such conduct must be detected and investigated; as discussed below, that is the necessary function of comprehensive surveillance-sharing agreements.[183] Moreover, as discussed below, a substantial majority of bitcoin trading occurs outside the United States,[184] and even within the United States, there is no comprehensive federal oversight of bitcoin spot markets.[185]

Another commenter suggests that the Commission sign a Memorandum of Understanding (''MOU'') with the Gemini Exchange to address what the commenter claims is the Commission's unspoken but obvious concern with bitcoin.[186] While the Commission is a party to several MOUs, these are generally arrangements with other foreign or domestic regulators.[187] MOUs are tools to assist the Commission in performing its regulatory functions, not a mechanism for the Commission to assume an SRO's obligations under the Exchange Act.

D. The Use of Surveillance-Sharing Agreements To Detect and Deter Fraudulent and Manipulative Acts and Practices With Respect to Commodity-Trust ETPs

The Commission has historically recognized the importance of comprehensive surveillance-sharing agreements to detect and deter fraudulent and manipulative activity. Because BZX has not demonstrated that bitcoin and bitcoin markets are uniquely resistant to manipulation—or that alternative means of detecting and deterring fraud and manipulation are sufficient in the absence of a surveillance-sharing agreement with a significant, regulated market related to bitcoin—the absence of such an agreement compels the Commission to conclude that the proposed rule change must be disapproved.

1. Summary of Comments Received

BZX claims that the March Disapproval Order overstates the extent to which surveillance and regulation of the underlying market have been present in prior commodity-trust ETP approval orders, asserting that none of these orders ''offers even a cursory analysis about whether the regulated markets for trading futures on the underlying commodity are 'well-established' or 'significant.' '' [188] In particular, BZX argues that the Commission orders approving the ETFS Platinum Trust ETP (''Platinum Order'') and the ETFS Palladium Trust ETP (''Palladium Order''),[189] along with their exchange filings, discuss neither whether the New York Mercantile Exchange (''NYMEX'') and the Tokyo Commodity Exchange (''TOCOM'') are well-established or significant, nor the relevance of NYMEX being the largest exchange in the world for trading palladium and platinum derivatives.[190] BZX claims that—because the exchange filings regarding the platinum and palladium ETPs note that TOCOM is not a member of the Intermarket Surveillance Group and that the respective listing exchange did not have a comprehensive surveillance-sharing agreement with TOCOM—those approval orders did not require the existence of an information-sharing agreement with the underlying

[176] *See* 15 U.S.C. 78f(b)(5).

[177] *See supra* note 171 and accompanying text.

[178] *See* BZX Rule 14.11(e)(4)(G).

[179] *See* Amendment No. 1, *supra* note 1, 81 FR at 76668.

[180] *See also* Section III.B.1(b)(ii), *supra* (discussing market domination).

[181] *See supra* note 174 and accompanying text.

[182] 15 U.S.C. 78f(b)(5) (emphasis added).

[183] See Section III.D, *infra.*

[184] *See infra* notes 281–282 and accompanying text.

[185] *See infra* notes 286–288 and accompanying text.

[186] *See supra* note 175 and accompanying text.

[187] *See, e.g.,* Memorandum of Understanding Between the Internal Revenue Service and the Securities and Exchange Commission for Tax Exempt Bonds/Municipal Securities Compliance (Mar. 2, 2010), *available at https://www.sec.gov/info/municipal/sec-irs-mou030210.pdf;* Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Coordination in Areas of Common Regulatory Interest (Mar. 11, 2008), *available at https://www.sec.gov/news/press/2008/2008-40_mou.pdf;* and Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding the Oversight of Security Futures Product Trading and the Sharing of Security Futures Product Information (Mar. 17, 2004), *available at http://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/file/moubetweencftcandsec031704.pdf.*

[188] *See* BZX Letter II, *supra* note 13, at 26–27.

[189] *See* Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (approving ETFS Platinum Trust); Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (approving ETFS Palladium Trust).

[190] *See* BZX Letter II, *supra* note 13, at 27.

exchange.[191] BZX further asserts that the Platinum Order and Palladium Order discuss only whether the listing exchange (1) can obtain information from market makers relating to their trading in the applicable commodity or related derivatives; (2) has a rule preventing market makers from using material, nonpublic information regarding trading in the underlying commodity or its derivatives; and (3) can obtain trading information via the Intermarket Surveillance Group from other Intermarket Surveillance Group member exchanges.[192]

BZX further asserts that, while the potential avenues for manipulation noted in the March Disapproval Order are a risk, these potential avenues of manipulation of the bitcoin market also exist in the context of other commodity-trust ETPs.[193] BZX asserts that, in the Commission order approving the listing and trading of shares of iShares Copper Trust (''Copper Order''),[194] the Commission found that demand from new investors would broaden the investor base in copper and thereby reduce the risk of collusion among copper market participants. BZX also argues that the Commission ''took comfort'' in approving the iShares Copper Trust because trading of the shares would be subject to the oversight of the listing exchange and the Commission, and because the manipulation of physical copper would be subject to CFTC jurisdiction. BZX asserts that the Trust is nearly identically situated to the iShares Copper Trust.[195] Similarly, the Lewis Letter asserts that many features of a similar bitcoin commodity-trust ETP proposal—features that purportedly ameliorate the risk of price manipulation through a dominant market share—are also factors that were used as a basis for the Commission's approval of another copper commodity-trust ETP.[196]

BZX contends that previous ETP approvals demonstrate that the factors used to determine whether currency-derivative products are consistent with the Exchange Act should also apply to commodity-trust ETPs. BZX argues that the Commission order approving the listing and trading of the streetTRACKS Gold Shares (''Gold Order'') [197]—the first commodity-trust ETP—was based on an assumption that the currency market and the spot gold market were largely unregulated, but found that certain factors mitigated the concerns arising from the unregulated underlying markets.[198] BZX claims that, in determining whether a commodity-trust ETP is consistent with the Exchange Act, the Commission's approval orders have included an analysis of previously approved derivative products for which the underlying reference assets (1) are traded OTC; (2) are largely unregulated; and (3) are traded on markets with which the ETP listing exchange could not enter into a surveillance sharing agreement.[199] While BZX concedes that the Commission has not approved a commodity-trust ETP when there were no derivatives markets related to the underlying commodity, BZX points out that the Commission has approved a number of currency-trust ETPs and asserts that the Commission approved the listing and trading of the CurrencyShares Hong Kong Dollar Trust and the CurrencyShares Singapore Dollar Trust based largely on the same factors that the Commission has considered in approving commodity-trust ETPs, despite a statement in the approval order for the CurrencyShares Hong Kong Dollar Trust and the CurrencyShares Singapore Dollar Trust that futures or options are not traded on the Hong Kong Dollar or Singapore Dollar.[200] Similarly, one commenter argues that there are several commodity-based and other ETPs where the underlying market is either unregulated or lightly regulated, such as foreign-exchange linked or related ETPs, or commodity-based ETPs that hold the underlying and not the derivative product.[201]

2. Discussion

(a) The History and Importance of Surveillance-Sharing Agreements Relating to Derivative Securities Products

Although BZX claims to have described ''traditional means'' of identifying and deterring fraud and manipulation, it overlooks the fact that the Commission has long recognized the importance of comprehensive surveillance-sharing agreements to detect and deter fraudulent and manipulative activity.[202] The hallmarks

[191] *See id.* at 27–28.

[192] *See id.* at 27.

[193] *See* Petition for Review, *supra* note 4, at 12. The Overdahl Letter agrees with this assertion by BZX. *See* Overdahl Letter, *supra* note 36, at 10.

[194] *See* Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726 (Feb. 28, 2013) (SR–NYSEArca–2012–66) (approving iShares Copper Trust).

[195] *See* BZX Letter II, *supra* note 13, at 13–14; *see also id.* at 25.

[196] *See* Lewis Letter I, *supra* note 65, at 6 & n.8 (referring to the SolidX Bitcoin Trust, *see* SolidX Order, *supra* note 65, and to the JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468 (Dec. 20, 2012) (SR–NYSEArca–2012–28)).

[197] *See* Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614 (Nov. 5, 2004) (SR–NYSE–2004–22) (approving streetTRACKS Gold Shares).

[198] *See* BZX Letter II, *supra* note 13, at 28–29.

[199] *See id.* at 29.

[200] *See id.* at 28 n.59. *See also* Exchange Act Release No. 58365 (Aug. 14, 2008), 73 FR 49522 (Aug. 21, 2008) (SR–NYSEArca–2008–81) (approving CurrencyShares Hong Kong Dollar Trust, CurrencyShares Singapore Dollar Trust, and two other issues of CurrencyShares based on non-U.S. currencies).

[201] *See* Convergex Letter, *supra* note 36, at 2.

[202] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29,

2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca– 2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

of such an agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.[203]

Since at least 1990, the Commission has explained that the ability of a national securities exchange to enter into surveillance-sharing agreements ''furthers the protection of investors and the public interest because it will enable the [e]xchange to conduct prompt investigations into possible trading violations and other regulatory improprieties.'' [204] The Commission has also long taken the position that surveillance-sharing agreements are important in the context of exchange listing of derivative security products, such as equity options. In 1994, the Commission stated:

> As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange proposing to list an equity option and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses. In particular, the Commission notes that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.[205]

With respect to ETPs, when approving in 1995 the listing and trading of one of the first commodity-linked ETPs—a commodity-linked exchange-traded note—on a national securities exchange, the Commission continued to emphasize the importance of surveillance-sharing agreements, noting that the listing exchange had entered into surveillance-sharing agreements with each of the futures markets on which pricing of the ETP would be based and stating that ''[t]hese agreements should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making [the commodity-linked notes] less readily susceptible to manipulation.'' [206]

[203] *See, e.g.,* Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), *available at https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm.*

[204] *See* Exchange Act Release No. 27877 (Apr. 4, 1990), 55 FR 13344, 13345 (Apr. 10, 1990) (SR–NYSE–90–14).

[205] Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR–Amex–93–28) (order approving listing of options on American Depositary Receipts). The Commission further stated that it ''generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace. The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.'' *Id.*

[206] *See* Exchange Act Release No. 35518 (Mar. 21, 1995), 60 FR 15804, 15807 (Mar. 27, 1995) (SR-Amex–94–30). In that matter, the Commission noted that the listing exchange had comprehensive surveillance-sharing agreements with all of the exchanges upon which the futures contracts overlying the notes traded and was able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and other futures exchanges. *See id.* at 15807 n.21; *see also* Exchange Act Release No. 36885 (Feb. 26, 1996), 61 FR 8315, 8319 n.17 (Mar. 4, 1996) (SR–Amex–95–50) (approving the exchange listing and trading of Commodity Indexed Securities, and noting: (a) That through the comprehensive surveillance-sharing agreements, the listing exchange was able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and COMEX and that, through the Intermarket Surveillance Group information-sharing agreement, the listing exchange was able to obtain, upon request, surveillance information with respect to trades effected on the London Metal Exchange, including client identity information and (b) that, if a different market were utilized for purposes of calculating the value of a designated futures contract, the listing exchange had represented that it would ensure that it entered into a surveillance-sharing agreement with respect to the new relevant market). The Commission has made similar statements about surveillance-sharing agreements with respect to the listing and trading of stock-index, currency, and currency-index warrants. *See, e.g.,* Exchange Act Release No. 36166 (Aug. 29, 1995), 60 FR 46660 (Sept. 7, 1995) (SR–PSE–94–28) (approving a proposal to adopt uniform listing and trading guidelines for stock-index, currency, and currency-index warrants). Specifically, the Commission noted that ''a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses'' and stated that the Commission ''generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities.'' *Id.* at

Continued

In 1998, in adopting Exchange Act Rule 19b–4(e) [207] to permit the generic listing and trading of certain new derivatives securities products—including ETPs—the Commission again emphasized the importance of the listing exchange's ability to obtain from underlying markets, through surveillance-sharing agreements (called information-sharing agreements or ''ISAs'' in the release), the information necessary to detect and deter manipulative activity. Specifically, in adopting rules governing the generic listing of new derivatives securities products, the Commission stated that the Rule 19b–4(e) procedures would ''enable the Commission to continue to effectively protect investors and promote the public interest'' and stated that:

> It is essential that the SRO have the ability to obtain the information necessary to detect and deter market manipulation, illegal trading and other abuses involving the new derivative securities product. Specifically, there should be a comprehensive ISA [information-sharing agreement] that covers trading in the new derivative securities product and its underlying securities in place between the SRO listing or trading a derivative product and the markets trading the securities underlying the new derivative securities product. Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.[208]

Consistent with this principle, for the commodity-trust ETPs approved to date for listing and trading, there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group membership in common with, that market.[209]

In light of the history and purpose of looking to surveillance-sharing agreements, with respect to markets for assets underlying an ETP or for derivatives on those assets, the Commission interprets the terms ''significant market'' and ''market of significant size'' to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants.

(b) Response to Comments Regarding Surveillance-Sharing Agreements and Prior Commodity-Trust ETP Approvals

Prior ETP approval orders are consistent with the standards the Commission is applying to the BZX proposal. However, more recent approval orders for the well-established model of a precious-metal trust—for example, the Platinum Order and the Palladium Order—found it unnecessary to perform the exhaustive analysis of underlying markets and surveillance sharing provided by the first approval order for a precious metal commodity-trust ETP, the Gold Order, especially since the proposed rule change for platinum and palladium ETPs discussed surveillance-sharing agreements with significant, regulated platinum and palladium markets.[210]

BZX argues that even the Gold Order relied on alternative factors—primarily the depth and liquidity of the spot gold market—to mitigate Commission concerns about approving a commodity-trust ETP based on an asset that traded in unregulated, over-the-counter markets with which no surveillance sharing agreement could be executed.[211] The Gold Order does note the depth and liquidity of the gold market, likening the spot gold market to the ''extremely large, diverse market'' for OTC foreign exchange trading.[212] Significantly, however, the Gold Order demonstrates that the Commission did take into account the availability of surveillance-sharing agreements in approving the first commodity-trust ETP.

The Gold Order states that ''[i]nformation sharing agreements with markets trading securities underlying a derivative are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.'' [213] And, while the Gold Order observes that that it is ''not possible . . . to enter into an information sharing agreement with the OTC gold market,'' the order continues: ''Nevertheless, the Commission believes that the unique liquidity and depth of the gold market, *together with the MOU [Memorandum of Understanding] with NYMEX (of which COMEX is a Division)* and NYSE Rules 1300(b) and 1301, create the basis for the [ETP listing exchange] to monitor for fraudulent and manipulative practices in the trading of the Shares.'' [214] Thus, even though the Commission found that the over-the-counter market for gold was ''extremely deep and liquid,'' [215] the Commission's approval of the first precious metal ETP expressly relied on an agreement to share surveillance information between the listing exchange and a significant, regulated market for gold futures.[216]

In the years after the approval of the first precious-metal commodity-trust ETP, several other, virtually identical, commodity-trust ETPs have been approved.[217] Among the approval orders were the Platinum Order and the Palladium Order, which BZX cites as examples of the Commission approving a commodity-trust ETP without requiring that there be a surveillance-sharing agreement with a significant, regulated market for an underlying exchange. While neither the Platinum Order nor the Palladium Order expressly discusses such agreements, the record before the Commission at the time it issued those orders (including the notices of the proposed rule changes) shows that the ETP listing exchange was able to share surveillance information with the ''largest exchange in the world for trading precious metal futures and options,'' which had been trading both platinum futures and palladium futures for approximately 35 years at the time the Commission

46665 n.35. In addition, the Commission stated that ''[t]he ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.'' *Id.* at 46665 n.36.

[207] 17 CFR 240.19b–4(e).

[208] NDSP Adopting Release, *supra* note 21.

[209] *See supra* note 202.

[210] *See* Gold Order, *supra* note 197, 69 FR at 64614–15, 64618–19; Platinum Order, *supra* note 189, 74 FR at 68887–88; Palladium Order, *supra* note 189, 74 FR at 68896.

[211] *See supra* notes 197–199 and accompanying text. Another commenter also asserts that the Commission has approved several commodity-based ETPs where the underlying market is either unregulated or lightly regulated. *See supra* note 201 and accompanying text.

[212] Gold Order, *supra* note 197, 69 FR at 64619.

[213] *Id.*

[214] *Id.* (emphasis added).

[215] *Id.*

[216] *See id.* In the Gold Order, the Commission also stated that the ETP listing exchange had ''entered into a reciprocal Memorandum of Understanding ('MOU') with the NYMEX (of which COMEX is a division) for the sharing of information relating to any financial instrument based, in whole or in part, upon an interest in or performance of gold.'' *Id.* at 64618. The Gold Order also notes volume figures for spot gold trading provided by the London Bullion Market Association and gold futures trading provided by COMEX. *See id.* at 64619.

[217] *See supra* note 202.

approved commodity-trust ETPs holding those metals.[218]

Consistent with the discussion of ''significant market'' described above,[219] the Commission has not previously, and does not now, require that an ETP listing exchange be able to enter into a surveillance-sharing agreement with *each* regulated spot or derivatives market relating to an underlying asset, provided that the market or markets with which there is such an agreement constitute a ''significant market.''

While BZX and the Overdahl Letter assert that the potential avenues for manipulation of the bitcoin market also exist in the context of other commodity-trust ETPs, this argument merely reinforces the Commission's view that similar market structures—namely, surveillance-sharing agreements with significant, regulated markets—should be in place for a bitcoin-trust ETP just as they are for commodity-trust ETPs.[220] BZX also argues that the proposal should be approved because it is ''nearly identically situated'' to the iShares Copper Trust. In particular, BZX asserts that the Commission approved the iShares Copper Trust because the Commission believed that approval of the ETP could reduce the risk of manipulation in the underlying spot market and that the Commission could rely on surveillance by the listing exchange and CFTC jurisdiction to address concerns about manipulation—factors it argues support approval here.[221] The Copper Order, however, specifically noted the existence of surveillance-sharing agreements not only between the ETP listing market and copper futures markets, but also between the ETP listing market and a significant copper spot market, the London Metal Exchange.[222] And the Copper Order's analysis of the underlying physical market for copper does not reflect a determination that these factors could serve as an adequate alternative to a surveillance-sharing agreement, but was instead a response to certain commenters' arguments that approving the iShares Copper Trust would affirmatively disrupt the physical copper market.[223]

BZX argues that the Commission should approve the proposal because it has previously approved currency-trust ETPs—the CurrencyShares Hong Kong Dollar Trust and the CurrencyShares Singapore Dollar Trust—without requiring the existence of a surveillance-sharing agreement with underlying markets.[224] However, BZX has proposed to list and trade the Shares as a commodity-based ETP, not a currency-based ETP,[225] and the Commission as well as other agencies have distinguished bitcoin from currency.[226] Even if the Commission were to apply the approach it took in approving currency-trust ETPs, the Commission would still conclude that the proposal is not consistent with the Exchange Act, because the deep, liquid, and longstanding markets for currencies, which are dominated by regulated entities, bear little resemblance to the current state of bitcoin markets. Foreign currency derivatives traded on national securities exchanges for decades before the Commission approved currency-trust ETPs. And when it approved the first foreign currency derivatives in 1982—options on the British pound, the German mark, the Swiss franc, the Canadian dollar, and the Japanese yen, each the sovereign currency of a developed nation—the Commission explained that ''[t]he magnitude of the related foreign currency markets would appear to militate against a successful manipulation through inter-market trading activity.''[227] Similarly, when approving the listing and trading of additional foreign currency derivatives in 1992, the Commission recognized the ''developed markets for the component foreign currencies'' and observed that ''the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide.''[228]

The Gold Order echoed this view of the currency markets.[229] And the approval order for the CurrencyShares products that BZX cites includes the following representations by the listing exchange regarding the foreign currency markets:

Most trading in the global over-the-counter (''OTC'') foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the United States, the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code. Participants in the U.S. OTC market for

[218] *See* Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change for ETFS Palladium Trust includes NYSE Arca's representation that ''NYMEX is the largest exchange in the world for trading precious metals futures and options and has been trading palladium since 1974,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member); Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change for ETFS Platinum Trust includes NYSE Arca's representation that ''NYMEX is the largest exchange in the world for trading precious metals futures and options and has been trading platinum since 1974,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member). *See also supra* note 189 and accompanying text.

[219] *See* Section III.D.2(a), *supra.*

[220] The proposal does not involve an ETP that is based on an index of commodities where the component commodities are subject to surveillance-sharing agreements with significant, regulated markets. *See, e.g.,* Exchange Act Release No. 53105 (Jan. 11, 2006), 71 FR 3129, 3136 (Jan. 19, 2006) (SR–Amex–2005–059) (approving DB Commodity Index Tracking Fund based on an index that tracks the performance of futures contracts on crude oil, heating oil, aluminum, gold, corn, and wheat).

[221] *See supra* notes 194–195 and accompanying text. The Lewis Letter makes a similar argument. *See supra* note 196 and accompanying text.

[222] *See* Copper Order, *supra* note 194, 78 FR at 13727 n.7, and 13730.

[223] *See id.* at 13731–33.

[224] *See supra* note 200 and accompanying text. Another commenter also asserts that the Commission has approved several foreign exchange-linked ETPs where the underlying market is either unregulated or lightly regulated. *See* Convergex Letter, *supra* note 36, at 2.

[225] *See* Amendment No. 1, *supra* note 1, 81 FR at 76651.

[226] *See In re Bitcoin Inv. Tr.,* Exchange Act Release No. 78282, 2016 WL 4363462, at *1 n.1 (July 11, 2016); *In re Btc Trading, Corp.,* Securities Act Release No. 9685, Exchange Act Release No. 73783, 2014 WL 6872955, at *1 n.1 (Dec. 8, 2014); *In re Voorhees,* Securities Act Release No. 9592, 2014 WL 2465620, at *1 n.1 (June 3, 2014). The CFTC has concluded that Bitcoin is a virtual currency that is a commodity, ''distinct from 'real' currencies, which are the coin and paper money of the United States or another country that are designated as legal tender, circulate, and are customarily used and accepted as a medium of exchange in the country of issuance.'' *In re Coinflip, Inc.,* CFTC No. 15–29, 2015 WL 5535736, at *1 n.2 (Sept. 17, 2015). The Treasury Department's Financial Crimes Enforcement Network has noted: ''In contrast to real currency, 'virtual' currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction.'' Guidance: Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (Mar. 18, 2013) (discussing 31 CFR 1010.100(m)), *available at https://www.fincen.gov/resources/statutes-regulations/guidance/application-fincens-regulations-persons-administering.* The IRS has concluded that ''virtual currency is not treated as currency'' for purposes of federal tax laws. *IRS Virtual Currency Guidance,* I.R.S. Notice 2014–21, 2014–16 I.R.B. 938, 2014 WL 1224474 (Apr. 14, 2014).

[227] Exchange Act Release No. 19133 (Oct. 14, 1982), 47 FR 46946, 1982 WL 521987, at *5 (Oct. 21, 1982) (SR–Phlx–81–4).

[228] Exchange Act Release No. 31627 (Dec. 21, 1992), 57 FR 62399, 1992 WL 394554, at *4–5 (Dec. 30, 1992) (SR–Amex–92–36).

[229] *See* Gold Order, *supra* note 197, 69 FR at 64619.

foreign currencies are generally regulated by their oversight regulators.[230]

Neither BZX nor any of the commenters has provided data that would justify treating the markets for bitcoin similarly to the deep and liquid markets for fiat currencies. Moreover, the description of the worldwide market for bitcoin, in which both the trading venues and the participants are unregulated, bears little resemblance to the OTC markets for foreign currency, on which most trading is conducted by regulated financial institutions. Accordingly, the Commission's previous approvals of derivatives securities products based on foreign currencies are not a basis for the Commission to approve the proposal despite the absence of a surveillance-sharing agreement with a regulated market of significant size related to bitcoin.

E. Whether BZX Has Entered Into Surveillance-Sharing Agreements With Regulated Markets of Significant Size Related to Bitcoin

Although BZX asserts that it has entered into a comprehensive surveillance-sharing agreement with the Gemini Exchange with respect to bitcoin trading and that the Gemini Exchange is supervised by the NYSDFS, the record does not establish that the Gemini Exchange is a ''regulated market'' comparable to a national securities exchange or to the futures exchanges that are associated with the underlying assets of the commodity-trust ETPs approved to date. Even if the Gemini Exchange were ''regulated,'' the record does not support a finding that the Gemini Exchange represents a ''significant'' bitcoin-related market. Accordingly, the Commission finds that the surveillance-sharing agreement between BZX and the Gemini Exchange, even in combination with alternative means of detecting and deterring fraud and manipulation, is insufficient to demonstrate that the proposed rule change is consistent with Exchange Act Section 6(b)(5). Nor has BZX demonstrated that any of the current trading venues in the worldwide bitcoin spot market is a regulated market such that a comprehensive surveillance-sharing agreement with those venues would satisfy the requirements of Section 6(b)(5). And BZX has likewise failed to carry its burden to demonstrate that there is a regulated market of significant size in derivatives related to bitcoin with which the ETP listing market has entered into a comprehensive surveillance-sharing agreement.

1. The Gemini Exchange

(a) Summary of Comments Received

BZX asserts that it has entered into a comprehensive surveillance-sharing agreement with the Gemini Exchange through which it can obtain customer identity information about bitcoin transactions and market data.[231] Similarly, the Overdahl Letter claims that the surveillance-sharing agreement between the Gemini Exchange and BZX aims to detect and deter such conduct and that the agreement allows for continuous monitoring of trading activity to effectively conduct surveillance of the Gemini Auction price.[232]

BZX represents that the Gemini Exchange operates under the direct supervision and regulatory authority of the NYSDFS.[233] This is because, BZX argues, the Gemini Exchange is a facility of the Custodian, which is a New York State-chartered limited liability trust company.[234] BZX also represents that the Custodian is a fiduciary and that it must meet the capitalization, compliance, anti-money-laundering, consumer protection, and cyber security requirements set forth by the NYSDFS.[235]

BZX asserts that the Gemini Auction typically already transacts a volume greater than the proposed creation basket size for the Trust and that the Gemini Auction would likely support the needs of Authorized Participants to engage in basket creation or redemption.[236] BZX claims that the global bitcoin marketplace has the potential to provide even more liquidity and to be a source of bitcoin for basket creation and hedging. BZX also asserts that all intraday order-book and trade information on the Gemini Exchange is publicly available through various electronic formats and is also redistributed by various online aggregators, and that, with the launch of the proposed Trust, the Sponsor must make important pricing data available in real time.[237] As noted above, BZX also claims that the volume transacted in the Gemini Auction is generally more than 50% larger than the second-largest trade in the world, drawing an average daily volume of 1,200 bitcoins compared to approximately 800 bitcoins.[238]

One commenter claims that among USD bitcoin exchanges, Gemini has a 3% share and its liquidity measured by order book depth is significantly lower than that of several other exchanges. The commenter states that it is possible that, after the launch of an ETP, Gemini's liquidity and volume will increase, but claims that the nature of bitcoin trading that leads to the concentration of volume and liquidity outside of U.S. borders makes any significant future increase unlikely.[239] This commenter also observes that while Gemini is locally regulated by the NYSDFS, the global landscape of many unregulated bitcoin exchanges exerts huge influence on the Gemini Exchange and consequently on the proposed ETP.[240] Another commenter claims that the Gemini Exchange has the lowest liquidity of the three exchanges in the United States and is one of the least-liquid of all exchanges that trade bitcoin for USD.[241]

One commenter asserts that the size and importance of the Gemini Exchange and the itBit Exchange have grown substantially and claims that, from January 23, 2017, to May 10, 2017, the combined market share of these exchanges jumped from just 0.33% to 7.14% of total worldwide bitcoin volume, equivalent to more than 10,000 bitcoins per day on average.[242] This commenter also asserts that the geographic distribution of bitcoin spot trading has shifted in focus from Chinese-based platforms towards U.S.-based venues, which indicates increased transparency and safer regulation in the near future. The commenter asserts that—although the Gemini Exchange and the itBit Exchange remain the only two NYSDFS-regulated bitcoin exchanges, and while a market share of 7.14% leaves much room for growth—

[230] Exchange Act Release No. 58365, *supra* note 200, 73 FR at 49523.

[231] *See* Amendment No. 1, *supra* note 1, 81 FR at 76663, 76668; BZX Letter II, *supra* note 13, at 29–30.

[232] *See* Overdahl Letter, *supra* note 36, at 11.

[233] *See* Amendment No. 1, *supra* note 1, 81 FR at 76651–52.

[234] *See id.* at 76652.

[235] *See id.*

[236] *See* BZX Letter II, *supra* note 13, at 20; *but see* Section III.B.2(b), *supra*.

[237] *See* BZX Letter I, *supra* note 35, at 9; *see also* Petition for Review, *supra* note 4, at 15–16.

[238] *See* BZX Letter II, *supra* note 13, at 19–20.

[239] *See* Maher Letter, *supra* note 35 (noting that the market is very concentrated and is controlled by a small group of exchanges operating in China, three of which represented 96% of all bitcoin trade volume over a six-month period, and noting that the Gemini Exchange had a 0.07% share of bitcoin volume worldwide during that period, with a 3% share of USD-exchange volume).

[240] *See id.*

[241] *See* Anonymous Letter III, *supra* note 35.

[242] *See* SIG Letter, *supra* note 36, at 7. The itBit Exchange is a commercial bitcoin trading venue based in New York, NY. The NYSDFS has granted a charter under New York Banking Law to itBit Trust Company, LLC. *See* Press Release, NYSDFS, NY[S]DFS Grants First Charter to a New York Virtual Currency Company(May 7, 2015), *available at http://www.dfs.ny.gov/about/press/pr1505071.htm.*

the migration of global bitcoin trading volumes since mid-January 2017 is a positive trend.[243]

This commenter further asserts that, alongside Gemini Exchange and itBit Exchange, two other U.S.-based exchanges, GDAX and Kraken, have become significant spot bitcoin trading venues. According to this commenter, these four exchanges—the largest U.S. bitcoin exchanges—together now represent over 29% of worldwide bitcoin volume, up from just 1.47% on January 23, 2017. The commenter claims that, with almost a third of global spot bitcoin volume now occurring on these four U.S.-based trading venues, regulatory agencies and SROs have the opportunity to develop a robust framework of regulatory oversight and transparency that would support fair and orderly markets for both spot bitcoin and listed bitcoin-based ETPs.[244] This commenter predicts that the launch of a regulated, U.S.-listed bitcoin ETP will help drive more bitcoin trading volume onto U.S.-based exchanges, and this commenter asserts that this supplemental liquidity is likely to manifest itself mainly on U.S.-based bitcoin exchanges such as Gemini, itBit, GDAX, and Kraken, which will be the most liquid venues during U.S. trading hours.[245]

The Overdahl Letter asserts that, between September 21, 2016, and March 1, 2017, the Gemini Exchange accounted for 24.03% of bitcoin trading volume on U.S. exchanges and 7.35% of the global USD market for bitcoin.[246] The Overdahl Letter contends that the Gemini Auction price is reliable in that it generally reflects both prices for bitcoin traded at other U.S.-based bitcoin exchanges and prices for bitcoin traded at USD-based exchanges globally. The Overdahl Letter claims that significant deviations between the Gemini price and other prices are quickly reduced to normal (small) levels and that the Gemini price does not primarily cause these deviations. In addition, the Overdahl Letter concludes that, when price deviations are observed, pricing across exchanges tends to converge.[247] The Overdahl Letter also notes the concern expressed by some commenters that the Gemini Exchange had relatively low trading volume and that, as a result, the exchange price was less reliable than if the volumes were larger. In response to this concern, the Overdahl Letter provides a list of ETPs approved by the Commission that, the Overdahl Letter claims, have underlying assets with lower average daily volume than the average daily volume of the Gemini Exchange.[248]

(b) Discussion

BZX represents that it has entered into a comprehensive surveillance-sharing agreement with the Gemini Exchange with respect to bitcoin trading and that the Gemini Exchange is supervised by the NYSDFS and is thereby subject to capitalization, anti-money-laundering, compliance, consumer protection, and cybersecurity requirements.[249] The record, however, does not support a conclusion that the Gemini Exchange is a ''regulated market'' comparable to a national securities exchange or to the futures exchanges that are associated with the underlying assets of the commodity-trust ETPs approved to date.

The record does not establish that the Gemini Exchange's rules, including its trading rules, are subject to regulatory review or approval or that its trading operations are subject to regulatory examination. Commission regulation of the securities markets includes the elements of NYSDFS supervision described above,[250] but national securities exchanges are also, among other things, required to have rules that are ''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.'' [251] Moreover, national securities exchanges must file proposed rules with the Commission regarding certain material aspects of their operations,[252] and the Commission has the authority to disapprove any such rule that is not consistent with the requirements of the Exchange Act.[253] Thus, national securities exchanges are subject to Commission oversight of, among other things, their governance, membership qualifications, trading rules, disciplinary procedures, recordkeeping, and fees.[254]

Even if the Gemini Exchange were ''regulated,'' the record would not support a conclusion that the Gemini Exchange conducts a significant volume of trading in bitcoin because there is no evidence in the record that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on the Gemini Exchange (or any record evidence addressing how trading in the proposed ETP would or would not influence prices on the Gemini Exchange). Furthermore, there is insufficient evidence in the record to determine whether it is unlikely that trading in the ETP would be the predominant influence on prices on the Gemini Exchange. Indeed, if anything, the Gemini Auction size is currently so small that the proposed ETP could fundamentally affect supply and demand (and thus pricing) on the Gemini Exchange, not the other way around.[255]

The record thus includes at best uncertain information regarding the volume or liquidity of the Gemini Exchange, how the Gemini Exchange may influence the price of any ETP based on bitcoin, or how the existence of ETPs based on bitcoin may affect the Gemini Exchange. Commenters have provided varying estimates of the current and future volume of trading on

[243] *See* SIG Letter, *supra* note 36, at 7.

[244] *See id.* at 7–8.

[245] *See id.* at 8.

[246] *See* Overdahl Letter, *supra* note 36, at 8.

[247] *See id.* at 1, 7.

[248] *See id.* at 13–14.

[249] *See* Amendment No. 1, *supra* note 1, 81 FR at 76652, 76663, 76668; BZX Letter II, *supra* note 13, at 29–30.

[250] *See supra* notes 233–235 and accompanying text.

[251] 15 U.S.C. 78f(b)(5).

[252] 17 CFR 240.19b–4(a)(6)(i).

[253] Section 6 of the Exchange Act, 15 U.S.C. 78f, requires national securities exchanges to register with the Commission and requires an exchange's registration to be approved by the Commission, and Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), requires national securities exchanges to file proposed rule changes with the Commission and provides the Commission with the authority to disapprove proposed rule changes that are not consistent with the Exchange Act. Designated Contract Markets (commonly called ''futures markets'') registered with and regulated by the CFTC must comply with, among other things, a similarly comprehensive range of regulatory principles and must file rule changes with the CFTC. *See, e.g.,* Designated Contract Markets (DCMs), CFTC, *available at http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm.*

[254] The Commission notes that the NYSDFS recently issued ''guidance'' to supervised virtual currency business entities, including the Gemini Exchange, stating that these entities must ''implement measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing.'' *See* Maria T. Vulio, Superintendent of Financial Services, NYSDFS, *Guidance on Prevention of Market Manipulation and Other Wrongful Activity* (Feb. 7, 2018), *available at http://www.dfs.ny.gov/legal/industry/il180207.pdf.* This guidance was issued after the comment period for this proposed rule change ended, and there is nothing in the record regarding how this guidance has been implemented by the NYSDFS or by the affected entities.

[255] *See* Section III.B.2(b), *supra.*

the Gemini Exchange.[256] Moreover, because bitcoin markets are still evolving in significant ways, and because there is no comprehensive data source reflecting bitcoin trading, it is not currently possible to state with confidence what share of volume any particular spot trading venue has captured or will capture.[257] Bitcoin trading activity is dispersed across markets and OTC transactions worldwide, and there is no centralized, regulatory data source for bitcoin trading statistics. Accordingly, any analysis of worldwide trading activity must use unofficial sources that gather and disseminate trading data, and even these sources cannot capture OTC transactions, or transactions that take place in what the Registration Statement characterizes as ''dark pools.'' [258] Further, as discussed above,[259] recent volume in the Gemini Auction is a fraction of the size of a creation unit of the Trust, and therefore the Commission does not agree with the assertion by BZX that the Gemini Auction would support the needs of Authorized Participants to engage in basket creation or redemption.

Finally, the comparison offered by the Overdahl Letter between the average trading volume on the Gemini Exchange and the average trading volume of the underlying assets of other ETPs is inapt.[260] The issue here is not that the Gemini Exchange has low trading volume in an absolute sense but, rather, that the Trust would value its holdings using the Gemini Auction price, even though there is no basis in the record to find that the Gemini Auction represents a significant portion of worldwide bitcoin trading.[261]

Therefore, the Commission cannot conclude that the surveillance-sharing agreement between BZX and the Gemini Exchange, even in combination with the other means of detecting and deterring fraud and manipulation discussed above,[262] is sufficient to find that the proposal is consistent with Exchange Act Section 6(b)(5).

2. Other Bitcoin Spot Markets

(a) Summary of Comments Received

Several comment letters state that the majority of bitcoin trading occurs on exchanges outside the United States. One commenter claims that most daily trading volume is conducted on poorly capitalized, unregulated exchanges located outside the United States and that these non-U.S. exchanges and their practices significantly influence the price discovery process.[263] Another commenter states that the biggest and most influential bitcoin exchange is located outside U.S. jurisdiction.[264]

One commenter states that, since 2013, the price of bitcoin has been defined mostly by the major Chinese exchanges, whose volumes dwarf those of exchanges outside China. According to the commenter, the Chinese exchanges are not regulated or audited and are suspected of engaging in unethical practices such as front-running, wash trades, and trading with insufficient funds. The commenter interprets pricing data from these Chinese exchanges to mean that the price of bitcoin is defined entirely by speculation, without any ties to fundamentals.[265]

One commenter claims that a sizeable number of traders and owners of bitcoin do not desire to trade in a well-regulated environment for reasons including tax evasion, evading capital controls, and money laundering. This commenter also states that U.S. bitcoin exchanges do not offer products such as fee-free trading, margin trading, or options, which drive traffic to the top non-U.S. exchanges. This commenter also claims that several Chinese exchanges actively engage in bitcoin mining operations, creating a conflict of interest, and notes that these exchanges are unaudited and unaccountable.[266]

One commenter observes that Chinese markets drive much of the volume in the bitcoin markets.[267]Another commenter also claims that the Chinese exchanges that account for the bulk of trading are subject to little regulatory oversight and that existing know-your-customer or identity-verification measures are lax and can be easily bypassed.[268]

One commenter asserts that bitcoin is more transparent than the illiquid or opaque underlying assets of some other exchange-traded funds, because a large percentage of bitcoin transactions take place on electronic exchanges with actionable quotes and relatively tight bid/ask spreads and because transferring actual bitcoin between accounts at exchanges and other storage systems is also a transparent process, as transactions are printed using blockchain technology.[269]

BZX concedes in a comment letter that only a minority of the global spot bitcoin exchanges are subject to any regulatory regime.[270] BZX also argues that, as the bitcoin exchange market has matured, a number of new entrants, including two New York limited-purpose trust companies, have emerged and that these new entrants have markedly changed the once-concentrated and non-regulated landscape of the bitcoin exchange market.[271]

BZX and the Overdahl Letter note that the CFTC has designated bitcoin as a commodity and assert that the CFTC is ''broadly responsible for the integrity'' of bitcoin spot markets.[272] BZX acknowledges that the CFTC had not yet (as of the date of BZX's submissions) brought any enforcement actions based on the anti-manipulation provisions of the Commodity Exchange Act,[273] but notes that the CFTC has issued orders against U.S. and non-U.S. bitcoin exchanges for engaging in other activity prohibited by the Commodity Exchange Act and argues that, therefore, a regulatory framework for providing oversight and deterring market manipulation currently exists in the U.S.[274]

The Overdahl Letter asserts that any market can potentially be manipulated and states that this manipulation risk is

[256] *See supra* notes 237–248 and accompanying text.

[257] *See also supra* note 239 and accompanying text.

[258] Registration Statement, *supra* note 22, at 62. Additionally, while the Overdahl Letter asserts that, between September 21, 2016, and March 1, 2017, the Gemini Exchange accounted for 7.35% of the global USD-denominated bitcoin market, which does not include trading in bitcoin against other fiat currencies, *see supra* note 246 and accompanying text, the Overdahl Letter does not explain why the bitcoin-USD market—a subset of the global bitcoin market—is the appropriate measure when Authorized Participants in the Trust would be able to source their bitcoins through any market or OTC transaction.

[259] *See supra* note 165 and accompanying text.

[260] *See supra* note 248 and accompanying text.

[261] *See also infra* notes 263–268, 270 and accompanying text (summarizing commenters' views that most bitcoin trading volume occurs outside the U.S. on unregulated exchanges).

[262] *See* Section III.C.2, *supra.*

[263] *See* Williams Letter, *supra* note 35, at 2.

[264] *See* Anonymous Letter V, *supra* note 35.

[265] *See* Stolfi Letter II, *supra* note 35.

[266] *See* Maher Letter, *supra* note 35; *see also* Johnson Letter, *supra* note 35; Anonymous Letter V, *supra* note 35.

[267] *See* ARK Letter, *supra* note 35, at 5.

[268] *See* Maher Letter, *supra* note 35.

[269] *See* C&C Letter, *supra* note 36, at 2.

[270] *See* BZX Letter I, *supra* note 35, at 2–3 (noting that only a minority of global bitcoin exchanges are fully regulated for their fiduciary and custodial activities, and naming Gemini Trust Company LLC and itBit Trust Company LLC as the only two exchange operators that are subject to substantive regulation, each overseen by the NYSDFS).

[271] *See* BZX Letter II, *supra* note 13, at 15; *see also* Petition for Review, *supra* note 4, at 15.

[272] *See* BZX Letter I, *supra* note 35, at 3; BZX Letter II, *supra* note 13, at 17; Overdahl Letter, *supra* note 36, at 2.

[273] *See* BZX Letter I, *supra* note 35, at 3. The Commission notes that the CFTC has since obtained a federal court injunction against fraudulent activity related to ''virtual currency.'' *See CFTC* v. *McDonnell,* 287 F. Supp. 3d 213 (E.D.N.Y. 2018).

[274] *See* BZX Letter I, *supra* note 35, at 3; BZX Letter II, *supra* note 13, at 18.

why the CFTC and the Commission have anti-manipulation authority.[275] The Overdahl Letter also asserts that a host of other jurisdictions, including the U.K., Australia, Hong Kong, Singapore, Indonesia, and Thailand, have established some form of ''regulatory sandbox'' for blockchain, the technology that underlies bitcoin. The Overdahl Letter further asserts that, in March 2016, the Japanese cabinet approved bills treating bitcoin and other digital currencies as forms of money and that, in April 2017, Japan's parliament recognized bitcoin as an authorized method of payment. The Overdahl Letter claims that Japan regulates bitcoin as a form of prepaid payment and is approving regulated virtual-currency exchanges on which the Japanese regulator imposes capital, audit, and anti-money-laundering, and know-your-customer requirements. The Overdahl Letter concludes that, therefore, aside from the CFTC, another competent regulator with whom the Commission has a memorandum of understanding maintains a regulated bitcoin market.[276]

(b) Discussion

Based on the record before it, the Commission concludes that BZX has not shown that any of the current trading venues in the worldwide bitcoin spot market is a regulated market.

With respect to spot bitcoin trading outside the United States, BZX and commenters agree that the bulk of bitcoin trading has occurred in non-U.S. markets where there is little to no regulation governing trading,[277] and thus no sufficient and verifiable governmental market oversight designed to detect and deter fraudulent and manipulative activity.[278] And because no bitcoin spot market is currently a member of the Intermarket Surveillance Group, BZX is unable to use its membership in the Intermarket Surveillance Group to share surveillance information with those markets.[279] Further, as noted above,[280] the Bitcoin blockchain, while freely available to the public, identifies parties to a transaction only by a pseudonymous public-key address, and it does not distinguish bitcoin trading activity from other transfers of bitcoin, limiting its usefulness as a substitute for a surveillance-sharing agreement.

One commenter asserts that substantial trading volume has recently migrated away from Chinese exchanges in response to regulatory efforts by the Chinese government. But, according to statistics provided by other commenters,[281] a substantial majority of bitcoin trading continues to occur overseas,[282] and BZX concedes in a comment letter that only a minority of the global spot bitcoin exchanges are subject to any regulatory regime.[283] Moreover, the Registration Statement for the Winklevoss Bitcoin Trust states:

> The Bitcoin Exchanges on which bitcoin trades are new and, in most cases, largely unregulated. Furthermore, many Bitcoin Exchanges (including several of the most prominent U.S. Dollar-denominated Bitcoin Exchanges) do not provide the public with significant information regarding their ownership structure, management teams, corporate practices or regulatory compliance.[284]

Nor does the CFTC's oversight of bitcoin-derivative trading venues indicate that the CFTC is, as BZX and the Overdahl Letter argue, ''broadly responsible for the integrity of the bitcoin spot market'' or that the CFTC's enforcement powers with respect to spot trading mean that a ''regulatory framework for providing oversight and deterring market manipulation currently exists in the United States.'' [285] Spot bitcoin markets are not required to register with the CFTC, unless they offer leveraged, margined, or financed trading to retail customers.[286] In all other cases, including the Gemini Exchange, the CFTC does not set standards for, approve the rules of, examine, or otherwise regulate bitcoin spot markets.[287] As the CFTC itself has stated, while the CFTC ''has an important role to play,'' U.S. law ''does not provide for direct, comprehensive Federal oversight of underlying Bitcoin or virtual currency spot markets.'' [288]

Additionally, establishment by foreign regulators of what one commenter called ''regulatory sandboxes'' for blockchain technology,[289] or the regulation of bitcoin as a method of prepaid payment by others,[290] is not a sufficient basis for concluding that bitcoin trades worldwide on regulated markets with which the listing exchange can enter into a surveillance-sharing agreement. There is no evidence in the record before the Commission that any ''regulatory sandbox,'' however defined, has created a comprehensive regulatory regime for bitcoin trading venues, and, as explained in greater detail above in the context of the Gemini Exchange,[291] a ''regulated'' market means a market that can detect and prevent fraud and manipulation under Exchange Act Section 6(b)(5).

3. The Derivatives Markets

(a) Summary of Comments Received

One commenter claims that the bitcoin markets are not yet efficient and attributes this inefficiency, in part, to the nascent state of the bitcoin derivatives market. This commenter states that derivatives provide investors more ways to hedge against bitcoin's potential price movements, introduce more volume and liquidity, and generally give the markets more points of information about bitcoin's future prospects, leading to tighter bid/ask spreads. The commenter claims that

[275] *See* Overdahl Letter, *supra* note 36, at 2, 9–10.

[276] *See id.* at 12–13.

[277] See supra notes 263–268, 270 and accompanying text. The Commission also notes more recent reporting that a large portion of bitcoin trading volume continues to take place overseas, *see, e.g.,* Russo, *et al., This Is Where People Are Buying Bitcoin All Over the World* (Jan. 11, 2018), *https://www.bloomberg.com/graphics/2017-bitcoin-volume/,* although such reports are unnecessary to the Commission's finding, based on the record before it, that BZX has not shown that any of the current trading venues in the worldwide bitcoin spot market is a regulated market.

[278] *See supra* notes 263–268 and accompanying text.

[279] *See https://www.isgportal.org/isgPortal/public/members.htm* (listing the current members and affiliate members of the Intermarket Surveillance Group).

[280] *See* Section III.C.2, *supra.*

[281] *See supra* notes 243–244 and accompanying text.

[282] *See, supra* notes 244, 264–265, 267 and accompanying text.

[283] *See supra* note 270 and accompanying text. While BZX asserts that the Gemini Exchange is a regulated market, as discussed above, the Commission does not agree with that assessment. *See* Section III.E.1(b), *supra.*

[284] Registration Statement, *supra* note 22, at 22.

[285] *See supra* notes 272–274 and accompanying text.

[286] Commodity Exchange Act Section 2(c)(2)(D), 7 U.S.C. 2(c)(2)(D). *See also* Commodity Exchange Act Section 2(c)(2)(A)(i), 7 U.S.C. 2(c)(2)(A)(i) (defining CFTC jurisdiction to specifically cover contracts of sale of a commodity for future delivery (or options on such contracts), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange).

[287] The Gemini Exchange is not registered with the CFTC.

[288] CFTC Backgrounder, *supra* note 118, at 1. The Commission also notes the testimony of CFTC Chairman Giancarlo before the Senate Banking Committee that ''the CFTC does not have authority to conduct regulatory oversight over spot virtual currency platforms or other cash commodities, including imposing registration requirements, surveillance and monitoring, transaction reporting, compliance with personnel conduct standards, customer education, capital adequacy, trading system safeguards, cyber security examinations or other requirements.'' Giancarlo Testimony, *supra* note 117, Section I (CFTC Authority and Oversight Over Virtual Currencies). *See also* Section III.B.1(b)(iii), *supra* (discussing CFTC statutory authority over bitcoin derivatives products).

[289] *See supra* note 276 and accompanying text.

[290] *Id.*

[291] *See* Section III.E.1(b), *supra.*

most derivatives activity within the bitcoin markets is offered by entities outside of the purview of U.S. regulators.[292] The commenter observes that the lack of a robust and regulated derivatives market means that market participants do not have a broad basket of tools at their disposal, making hedging difficult and keeping away many market makers that provide significant liquidity to traditional capital markets. The commenter claims that, while derivative products may be in development, a full suite of investor tools that will drive market efficiency and eliminate price disparities is likely at least a couple of years away.[293] The commenter also states that, without a robust derivatives market for institutional investors to short the underlying asset or otherwise hedge their positions, there likely would be little counterbalance to the new demand generated by the ETP, and Authorized Participants could then have trouble sourcing bitcoin and hedging their positions, stalling the creation process.[294] The commenter concludes that it would be premature to launch a bitcoin ETP because bitcoin markets are not liquid enough to support an open-end fund and because an ecosystem of institutional-grade infrastructure players is not yet available to support such a product.[295]

One commenter disagrees with assertions linking inefficient bitcoin markets to nascent derivatives markets, stating that no evidence has been provided regarding the would-be effect of derivatives on the bitcoin market. The commenter claims that these assertions assume that bitcoin pricing is inefficient, which the commenter claims is not the case. The commenter also claims that these assertions assume that the lack of a derivatives market causes pricing to be inefficient, stating instead that there is direct evidence that many securities trade successfully and efficiently on U.S. and non-U.S. exchanges despite not having a direct derivatives market.[296] The commenter also disagrees with the claim that, absent a robust derivatives market, there would be little counterbalance to the new demand generated by the ETP, stating that it is impossible to predict the success or failure of the ETP. The commenter states that Authorized Participants may be able to source bitcoin from China.[297]

Another commenter claims that there are several bitcoin futures markets that have a significant impact on the spot price along with several OTC markets—such as the one that this commenter claims was recently launched by the Gemini Exchange—that also offer liquidity.[298]

The Lewis Letter states that one of the key differences between bitcoin and other commodities is the lack of a liquid and transparent derivatives market and that, although there have been nascent attempts to establish derivatives trading in bitcoin, bitcoin derivatives markets are not at this time sufficiently liquid to be useful to Authorized Participants and market makers who would like to use derivatives to hedge exposures.[299] The Lewis Letter claims that, for physical commodities that are not traded on exchanges, the presence of a liquid derivatives market is a necessary condition, but claims that for digital assets like bitcoin, derivatives markets are not necessary because price discovery occurs on the OTC market and exchanges instead.[300]

(b) Discussion

One commenter and the Lewis Letter assert that the existence of bitcoin derivative markets is not a necessary condition for a bitcoin ETP.[301] The key standard the Commission is applying here, however, is not that a futures or derivatives market is required for every commodity-trust ETP, but that—when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset. That is because, where a market of significant size exists with respect to derivatives on the asset underlying a commodity-trust ETP, the Commission believes that there is a reasonable likelihood that a person attempting to manipulate the ETP by manipulating the underlying spot market would also have to trade in the derivatives market in order to succeed, since arbitrage between the derivative and spot markets would tend to counter an attempt to manipulate the spot market alone.[302] Thus, the Commission believes that there is a reasonable likelihood that a surveillance-sharing agreement with that derivatives market would assist the ETP listing market in detecting and deterring an attempt to manipulate the commodity-trust ETP.

As noted above, the commodity-trust ETPs previously approved by the Commission have had—in lieu of regulated spot markets of significant size—a regulated futures market of significant size associated with the underlying commodity, and the listing exchange had entered into a surveillance-sharing agreement with that futures market or was able to obtain surveillance information through membership in the Intermarket Surveillance Group.[303] Based on the record before it, the Commission cannot conclude that a regulated bitcoin futures market of significant size currently exists because, similar to the Gemini Exchange, there is no evidence in the record that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on the bitcoin futures market, or any record evidence addressing how trading in the proposed ETP would or would not influence prices in the futures bitcoin market.

Consistent with the view of commenters summarized above, BZX's proposal describes the current derivative markets for bitcoin as ''[n]ascent.'' [304] BZX notes that certain types of options, futures, contracts for differences, and other derivative instruments are available in certain jurisdictions, but that many of them are not available in the United States and that these derivatives instruments are generally not regulated ''to the degree that U.S. investors expect derivatives instruments to be regulated.'' [305] BZX notes that the CFTC has approved the registration of TeraExchange LLC as a swap execution facility (''SEF'') and that, on October 9, 2014, TeraExchange announced that it had hosted the first executed bitcoin swap traded on a CFTC-regulated platform.[306] Further,

[292] *See* ARK Letter, *supra* note 35, at 5–6.

[293] *See id.* at 6. This commenter also states that, within the United States, one market offers bitcoin forwards and no one currently offers regulated bitcoin futures or options, *see id.,* but, as discussed below, *see infra* notes 310–311 and accompanying text, futures on bitcoin have begun trading on regulated U.S. designated contract markets.

[294] *See* ARK Letter, *supra* note 35, at 13–14.

[295] *See id.* at 2.

[296] *See* Anonymous Letter IV, *supra* note 35. Several commenters also assert that regulation by BZX of activity in the ETP could substitute for a lack of regulation in underlying or derivatives markets. *See, e.g.,* Baird Letter, *supra* note 35; Keeler Letter, *supra* note 35; Marchionne Letter, *supra* note 35; Bang Letter, *supra* note 35.

[297] *See* Anonymous Letter IV, *supra* note 35.

[298] *See* Dylan Letter, *supra* note 35, at 1.

[299] *See* Lewis Letter I, *supra* note 65, at 8.

[300] *See id.* at 8.

[301] *See supra* note 296 and accompanying text; Lewis Letter I, *supra* note 65, at 8.

[302] *See also* Section III.D.2(a), *supra* (discussion of Commission interpretation of the terms ''significant market'' and ''market of significant size'').

[303] *See supra* note 209 and accompanying text.

[304] *See* Amendment No. 1, *supra* note 1, 81 FR at 76661.

[305] *See id.*

[306] *See id.; see also* ARK Letter, *supra* note 35, at 6 (noting that TeraExchange offers bitcoin forwards).

BZX's proposal notes that, in 2015, CFTC temporarily registered another SEF that would trade swaps on bitcoin.[307]

The Commission acknowledges that TeraExchange, a market for swaps on bitcoin, has registered with the CFTC, but BZX's description of trading activity on that market fails to note that the very activity it cites was the subject of an enforcement action by the CFTC. The CFTC found that TeraExchange had improperly arranged for participants to make prearranged, offsetting ''wash'' transactions of the same price, notional amount, and time period and had then issued a press release ''to create the impression of actual trading in the Bitcoin swap.'' [308] Neither BZX nor any commenter provides evidence of meaningful trading volume in bitcoin derivatives on any regulated marketplace.

The CFTC has also registered LedgerX, a venue for trading bitcoin derivatives, as a SEF and a Derivatives Clearing Organization.[309] Additionally, on December 1, 2017, the CFE and the CME self-certified new contracts with the CFTC for bitcoin futures contracts.[310] CFE launched trading in its bitcoin futures contracts on December 10, 2017, and CME launched trading in its bitcoin futures contracts on December 17, 2017 (for a trade date of December 18, 2017).[311]

The record before the Commission, however, does not establish that the bitcoin derivatives markets are regulated markets of significant size. The record also does not establish how these markets may influence the price of any ETP based on bitcoin or how the existence of ETPs based on bitcoin may affect these markets. Publicly available data show that the median daily notional trading volume, from inception through April 24, 2018, has been 9,180 bitcoins on CME and 5,440 bitcoins on CFE, and that the median daily notional value of open interest on CME and CFE during the same period has been 7,875 bitcoins and 5,787 bitcoins, respectively.[312] For all bitcoin contracts traded on LedgerX from inception through April 24, 2018, publicly available data show that the median daily notional volume has been 55 bitcoins and that the median daily notional value of open interest has been 663 bitcoins.[313] But while these futures and derivative contract figures are readily available, meaningful analysis of the size of the CME, CFE, and LedgerX markets relative to the underlying bitcoin spot market is challenging, because reliable data about the spot market, including its overall size, are unavailable.[314] The Commission notes that in recent testimony CFTC Chairman Giancarlo characterized the volume of the bitcoin futures markets as ''quite small.'' [315] The Commission also notes that the President and COO of Cboe recently acknowledged in a letter to the Commission staff that ''the current bitcoin futures trading volumes on Cboe Futures Exchange and CME may not currently be sufficient to support ETPs seeking 100% long or short exposure to bitcoin.'' [316] These statements reinforce the Commission's conclusion that there is insufficient evidence to determine that the bitcoin derivatives markets are significant.

Thus, while LedgerX, CME, and CFE are regulated markets for bitcoin derivatives, there is no basis in the record for the Commission to conclude that these markets are of significant size. Additionally, because bitcoin futures have been trading on CME and CFE only since December 2017, the Commission has no basis on which to predict how these markets may grow or develop over time, or whether or when they may reach significant size.

Although BZX has not demonstrated that a regulated bitcoin futures market of significant size currently exists, the Commission is not suggesting that the development of such a market would automatically require approval of a proposed rule change seeking to list and trade shares of an ETP holding bitcoins as an asset. The Commission would need to analyze the facts and circumstances of any particular proposal and examine whether any unique features of a bitcoin futures market would warrant further analysis before approval.

F. The Protection of Investors and the Public Interest

BZX contends that, if approved, its ETP would protect investors and promote the public interest, but the Commission finds that BZX has not made such a showing on the current record. The Commission must consider any potential benefits in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. And because BZX has not demonstrated that its proposed rule change is designed to prevent fraudulent and manipulative acts and practices, the Commission must disapprove the proposal.

1. Summary of Comments Received

Several commenters asserted that access to bitcoin through an ETP would extend regulatory protections to investors. One commenter asserts that, if the U.S. were to approve an ETP and bring regulatory standards and oversight to cryptocurrencies, investors would not see major problems as they did with the Bitfinex and Mt. Gox hacks and that, if the ETP were not approved, investors would be forced to use those less-than-ideal exchanges.[317] One commenter asserts that the alternative to a regulated ETP is investors having to purchase

[307] *See* Amendment No. 1, *supra* note 1, 81 FR at 76661 (referring to Ledger X LLC).

[308] *See* TeraExchange Settlement Order, *supra* note 93.

[309] *See* Order of Registration in the Matter of the Application of LedgerX LLC for Registration as a Swap Execution Facility (CFTC July 6, 2017), *available at http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/orgledgerxord170706.pdf;* Order of Registration in the Matter of the Application of LedgerX, LLC for Registration as a Derivatives Clearing Organization (CFTC July 24, 2017), *available at http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/ledgerxdcoregorder72417.pdf.*

[310] *See* Letter from Andrew Lowenthal, Senior Managing Director, CFE to Christopher J. Kirkpatrick, Secretary, CFTC (Dec. 1, 2017), *available at http://www.cftc.gov/filings/ptc/ptc120117cfedcm001.pdf;* Letter from Christopher Bowen, Managing Director and Chief Regulatory Counsel, CME Group to Christopher J. Kirkpatrick, Office of the Secretariat, CFTC (Dec. 1, 2017), *available at http://www.cftc.gov/filings/ptc/ptc120117cmedcm001.pdf.*

[311] The Commission notes that the Cantor Exchange has also self-certified bitcoin binary options, *see* CFTC Backgrounder, *supra* note 118, at 2, but this product has not yet begun to trade.

[312] These futures volume figures were calculated by Commission staff using data published by CME and CFE on their websites.

[313] These derivative contract volume figures were calculated by Commission staff using data published by LedgerX on its website.

[314] *See* Section III.B.1(b)(i), *supra.*

[315] CFTC Chairman Giancarlo testified: ''It is important to put the new Bitcoin futures market in perspective. It is quite small with open interest at the CME of 6,695 bitcoin and at Cboe Futures Exchange (Cboe) of 5,569 bitcoin (as of Feb. 2, 2018). At a price of approximately $7,700 per Bitcoin, this represents a notional amount of about $94 million. In comparison, the notional amount of the open interest in CME's WTI crude oil futures was more than one thousand times greater, about $170 billion (2,600,000 contracts) as of Feb[.] 2, 2018 and the notional amount represented by the open interest of Comex gold futures was about $74 billion (549,000 contracts).'' Giancarlo Testimony, *supra* note 117, text accompanying nn.14–15.

[316] Letter from Chris Concannon, President and COO, Cboe Global Markets, to Dalia Blass, Director, Division of Investment Management, Commission, at 5 (Mar. 23, 2018), *available at https://www.sec.gov/divisions/investment/cboe-global-markets-innovation-cryptocurrency.pdf.*

[317] *See* Baird Letter, *supra* note 35. Bitfinex and Mt. Gox are bitcoin trading venues that have reportedly suffered significant losses from hacking. *See* Nathaniel Popper and Rachel Abrams, *Apparent Theft at Mt. Gox Shakes Bitcoin World,* The New York Times (Feb. 25, 2014), *available at https://www.nytimes.com/2014/02/25/business/apparent-theft-at-mt-gox-shakes-bitcoin-world.html;* Amie Tsang, *Bitcoin Plunges After Hacking of Exchange in Hong Kong,* The New York Times (Aug. 3, 2016), *available at https://www.nytimes.com/2016/08/04/business/dealbook/bitcoin-bitfinex-hacked.html.*

bitcoin at unregulated exchanges lacking SEC oversight.[318] One commenter asserts that disapproval of the ETP would create a more risky environment for investors, who will not have the option of investing through regulated exchanges.[319] One commenter argues that, because of the use of an auction process to determine NAV, the use of well-known and respected Authorized Participants, and the environment that allows market participants to use arbitrage techniques to hold pricing where it should be, the risk to investors who invest in the ETP may be lower than the risk borne by those who buy or sell bitcoin directly.[320] And another commenter asserts that, with innovative use cases emerging for bitcoin and for the associated technology of blockchain each passing day, investors seeking exposure to bitcoin should have options similar to those currently available for physical bullion.[321]

BZX argues that the Shares would significantly reduce or eliminate costs and inefficiencies and would expand opportunities for investors by providing an inexpensive vehicle to gain exposure to bitcoin in a secure and easily accessible product that is familiar, transparent, and meaningfully regulated.[322] BZX asserts that, for prospective investors in bitcoin, direct investment brings with it significant inconvenience, complexity, expense, and risk. As investor demand for exposure to bitcoin continues to increase, BZX asserts, these problems grow larger. BZX argues that the Shares would significantly reduce or completely remove each of these hurdles.[323] BZX also argues that Commission should approve the proposal because Commission oversight of the trading of the ETP shares on a national securities exchange would enhance the transparency of the underlying bitcoin markets.[324] BZX also asserts that the Gemini Exchange is uniquely positioned, because of its regulatory status and licensing, to be a venue on which traditional financial institutions will be comfortable transacting in bitcoin, and BZX posits that these financial institutions provide a bridge to the equities markets and other capital markets, improving price discovery, liquidity, and transparency.[325]

The Overdahl Letter asserts that the approval of the proposed bitcoin ETP would facilitate a cost-effective and convenient means for investors to gain exposure to bitcoin similar to a direct investment in bitcoin, improving portfolio diversification opportunities for investors, and would help make bitcoin markets more transparent.[326] The Overdahl Letter also argues that a bitcoin ETP will protect current investors in bitcoin by providing regulatory certainty.[327] The Overdahl Letter predicts that the availability of a bitcoin ETP would help attract professional market makers to the spot market, as well as the market for bitcoin ETPs, and that the presence of these professional market makers would add to the resilience of the spot price on the exchange, improve liquidity and other measures of market quality, and promote trading volume at the exchange.[328]

The Lewis Letter asserts that bitcoin is relatively uncorrelated with other assets, enabling investors to construct more efficient portfolios.[329] BZX and the Lewis Letter also assert that listing the shares on a national securities exchange and a shift from OTC trading to trading on exchanges would make the overall bitcoin market more transparent.[330] Similarly, one commenter asserts that trading in the Shares and the adoption of best practices, such as IIV and NAV dissemination, will enhance the resiliency and efficiency of the market for bitcoin.[331]

One commenter believes that lack of regulation and consumer protection also increases the chance and incentives for market price manipulation and states that approving the ETP before structural protections and controls are firmly in place would put investors at undue risk.[332] This commenter asserts that several fundamental flaws make bitcoin a dangerous asset class to force into an exchange-traded structure, including shallow trade volume, extreme hoarding, low liquidity, hyper price volatility, a global web of unregulated bucket-shop exchanges, high bankruptcy risk, and oversized exposure to trading in countries where there is no regulatory oversight.[333]

2. Discussion

BZX, the Overdahl Letter, and other commenters assert that investment in bitcoin through a ETP would reduce the expense, complexity, and risk of bitcoin exposure.[334] BZX, the Overdahl Letter, and the Lewis Letter further assert that approval of the Winklevoss Bitcoin Trust would make bitcoin markets more transparent,[335] and the Overdahl Letter argues that approval of the proposal would protect investors by providing regulatory certainty.[336] Additionally, the Overdahl Letter and Lewis Letter argue that approval of the proposal would improve the availability of investment and portfolio diversification opportunities for investors.[337]

The Commission acknowledges that each of these is a potential benefit of a bitcoin ETP. The Commission, however, must consider these potential benefits in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.[338] Thus, even if a proposed rule change would provide certain benefits to investors and the markets, the proposed rule change may still fail to meet other requirements under the Exchange Act.[339] For the reasons discussed above, BZX has not met its burden of demonstrating an adequate basis in the record for the Commission to find that the proposal is consistent with

[318] *See* Keeler Letter, *supra* note 35.

[319] *See* Bang Letter, *supra* note 35.

[320] *See* Convergex Letter, *supra* note 36, at 2.

[321] *See* Virtu Letter, *supra* note 36, at 2.

[322] *See* BZX Letter II, *supra* note 13, at 8.

[323] *See id.* at 3, 8.

[324] *See id.* at 17; Petition for Review, *supra* note 4, at 16; Overdahl Letter, *supra* note 36, at 13; Virtu Letter, *supra* note 36, at 2.

[325] *See* BZX Letter II, *supra* note 13, at 20–21.

[326] *See* Overdahl Letter, *supra* note 36, at 13.

[327] *See* Overdahl Letter, *supra* note 36, at 13.

[328] *See* Overdahl Letter, *supra* note 36, at 3, 8.

[329] *See* Lewis Letter I, *supra* note 65, at 11–16.

[330] *See id.* at 7. *See also* Petition for Review, *supra* note 4, at 16.

[331] *See* Virtu Letter, *supra* note 36, at 2.

[332] *See* Williams Letter, *supra* note 35, at 2–3.

[333] *See id.* at 1.

[334] *See* Section III.F.1, *supra.*

[335] *See supra* notes 324–326, 330 and accompanying text.

[336] *See supra* note 327 and accompanying text.

[337] *See supra* notes 326, 329 and accompanying text.

[338] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

[339] The Commission also notes that, according to the Trust's Registration Statement, investors in the Trust would still be subject to some of the risks of holding bitcoin directly. *See* Registration Statement, *supra* note 22, at 29 (''Security breaches, 'cyber attacks,' computer malware and computer hacking attacks have been a prevalent concern in the Bitcoin Exchange Market since the launch of the Bitcoin Network. Any cyber security breach caused by hacking . . . could harm the Trust's business operations or result in loss of the Trust's assets.'').

Exchange Act Section 6(b)(5),[340] and, accordingly, the Commission must disapprove the proposal.

G. Additional Factors Supporting Disapproval

As addressed in detail above, the Commission is disapproving the proposed rule change because BZX has not met its burden to demonstrate that its proposal is consistent with Exchange Act Section 6(b)(5). BZX has neither entered into surveillance-sharing agreements with regulated, bitcoin-related markets of significant size nor demonstrated that alternative means of compliance with Exchange Act Section 6(b)(5) would be sufficient. Because BZX has failed to carry its burden, the proposed rule change must be disapproved.

The Commission also notes several inconsistencies between the BZX's proposed rule change and the Trust's Registration Statement that reinforce the need to disapprove BZX's proposal. For example, in its proposal, BZX points to the following factors that, in its view, weigh in favor of approval. Those factors include ''the liquidity of the market in the underlying commodity,'' ''the trading volume in derivatives based on the underlying commodity,'' ''listing exchange rules and procedures prohibiting use of material nonpublic information,'' and ''listing exchange rules regarding trading halts.'' [341] But those factors cannot be reconciled with BZX's current proposal and thus provide independent confirmation that the proposed rule change must be disapproved.

Liquidity of bitcoin markets. The Trust's Registration Statement concedes that underlying bitcoin markets are insufficiently liquid to protect against credible threats to those markets' integrity. The Trust's Registration Statement, for example, acknowledges that ''operational interruption'' in large bitcoin exchanges ''may limit the liquidity of bitcoin'' and ''result in volatile prices and a reduction in confidence'' and that ''[t]rading on a single Bitcoin Exchange may result in less favorable prices and decreased liquidity.'' [342] The Trust's characterizations of the bitcoin markets contrast with, for example, the over-the-counter gold market, which the Commission noted had ''unique liquidity and depth.'' [343] This factor accordingly weighs against approval of the proposed rule change.

Trading volume in derivatives based on the underlying commodity. The Trust's Registration Statement recognizes that bitcoin derivatives markets are nascent and insufficiently developed in regulated marketplaces to serve meaningful purposes such as, for example, providing investors with credible information regarding bitcoin's future prospects.[344] As the Trust's Registration Statement acknowledges, ''[a] limited market currently exists for bitcoin-based derivatives.'' [345] As explained above, the market for bitcoin-based derivatives is not yet well developed.[346] That differs, for example, from platinum and palladium markets, where futures products on those metals had been trading for several decades before commodity-trust ETPs were launched, and where the Commission has noted that exchanges are able to adequately ''obtain information regarding trading'' in regulated derivatives. This factor accordingly weighs against approval of the proposed rule change.

Listing exchange rules and procedures prohibiting use of material nonpublic information. Regardless of BZX's rules and procedures regarding insider trading, many underlying bitcoin markets are, at present, opaque.[347] According to the Trust's Registration Statement, for example, ''[m]any Bitcoin Exchanges do not provide the public with significant information regarding their ownership structure, management teams, corporate practices or regulatory compliance.'' [348] The Trust itself thus recognizes that there is a significant risk that material nonpublic information may be used in a manner that could affect bitcoin prices and, in turn, any ETP using bitcoin as an underlying asset. This factor weighs against approval of the proposed rule change.

Listing exchange rules regarding trading halts. Regardless of BZX's rules regarding trading halts, BZX has not explained how it will respond to disruptions in trading in underlying bitcoin markets.[349] The Trust's Registration Statement acknowledges the unusual and severe nature of such trading halts in bitcoin, noting that ''[e]ven the largest Bitcoin Exchanges have been subject to operational interruption (*e.g.,* the temporary shutdown of Mt. Gox due to distributed denial of service attacks ('DDoS') attacks by hackers and/or malware, and its permanent closure in February 2014).'' [350] Moreover, as one commenter noted, the Gemini Auction has failed on at least two occasions.[351] Such trading halts could result in volatile prices and reduced confidence in any ETP that uses bitcoin as an underlying asset. Accordingly, this factor weighs against approval of the proposed rule change.

H. Other Comments

Comment letters also addressed the following topics: [352]

- The nature and uses of bitcoin; [353]
- the state of development of bitcoin as a digital asset; [354]
- the use of bitcoin for illegal activities; [355]
- the inherent value of, and risks of investing in, bitcoin; [356]
- the cost of electricity required to maintain the Bitcoin network; [357]
- the desire of investors to gain access to bitcoin through an ETP; [358]

[340] 15 U.S.C. 78f(b)(5).

[341] Petition for Review, *supra* note 4, at 6–7 & n.17; *see also* BZX Letter II, *supra* note 13, at 22–25.

[342] Registration Statement, *supra* note 22, at 22.

[343] Gold Order, *supra* note 197, 69 FR at 64619.

[344] *See* Section III.E.3(a), *supra.*

[345] Registration Statement, *supra* note 22, at 59.

[346] See Section III.E.3(b), *supra.*

[347] *See* Section III.B.1, *supra.*

[348] Registration Statement, *supra* note 22, at 61.

[349] *See* Section II, *supra.*

[350] Registration Statement, *supra* note 22, at 22.

[351] *See supra* note 148 and accompanying text.

[352] The Commission also received comments expressing support for the proposal, without articulating any argument in favor of the proposal. *See* Barraza Letter, *supra* note 35; Shad Letter, *supra* note 35.

[353] *See* Stolfi Letter I, *supra* note 35; Stolfi Letter II, *supra* note 35; Chronakis Letter, *supra* note 35; Anonymous Letter VII, *supra* note 35.

[354] *See* Stolfi Letter II, *supra* note 35; Barish Letter IV, *supra* note 35; ARK Letter, *supra* note 35; Lee Letter, *supra* note 35; Chronakis Letter, *supra* note 35; Struna Letter, *supra* note 35; Johnson Letter, *supra* note 35; Anonymous Letter V, *supra* note 35; Whitman Letter, *supra* note 35; Anonymous Letter VI, *supra* note 35; Barish Letter II, *supra* note 35; Ackerman Letter, *supra* note 35; Medina Letter, *supra* note 35; Paslaqua Letter, *supra* note 35; BZX Letter II, *supra* note 13, at 7–8.

[355] *See* Xin Lu Letter, *supra* note 35; Anonymous Letter VI, *supra* note 35; Harris Letter, *supra* note 36, at 2.

[356] *See* Stolfi Letter I, *supra* note 35; Stolfi Letter II, *supra* note 35; Shatto Letter, *supra* note 35; Lethuillier Letter, *supra* note 35; Delehanty Letter, *supra* note 35; Xin Lu Letter, *supra* note 35; Neidhardt Letter, *supra* note 35; XBT Letter, *supra* note 35; Williams Letter, *supra* note 35; ARK Letter, *supra* note 35; Kim Letter, *supra* note 35; Dalla Val Letter, *supra* note 35; Paneque Letter, *supra* note 35; Lee Letter, *supra* note 35; Chronakis Letter, *supra* note 35; Struna Letter, *supra* note 35; Johnson Letter, *supra* note 35; Whitman Letter, *supra* note 35; Primm Letter; *supra* note 35; Anonymous Letter VI, *supra* note 35; Barish Letter III, *supra* note 35; Barish Letter V, *supra* note 35; Anonymous Letter VII, *supra* note 35; Ackerman Letter, *supra* note 35; Paslaqua Letter, *supra* note 35; Harris Letter, *supra* note 36, at 2.

[357] *See* Harris Letter, *supra* note 36, at 2.

[358] *See* R.D. Miller Letter, *supra* note 35; R. Miller Letter, *supra* note 35; Hall Letter, *supra* note 35; Keeler Letter, *supra* note 35; Lethuillier Letter, *supra* note 35, at 2; Anonymous Letter I, *supra* note 35; Herbert Letter, *supra* note 35; Fernandez Letter, *supra* note 35; Tomaselli Letter, *supra* note 35; Circle Letter, *supra* note 35; Baird Letter, *supra* note 35; Stolfi Letter I, *supra* note 35; Anderson Letter, *supra* note 35; P. Miller Letter, *supra* note 35;

Continued

• investor understanding about bitcoin; [359]

• the appropriate measures for the Trust to secure its bitcoin holdings against theft or loss; [360]

• whether the Trust should insure its bitcoin holdings against theft or loss; [361]

• the adequacy of the Trust's procedures for handling potential ''forks'' in the bitcoin blockchain; [362]

• the blockchain treatment of positions in the Shares, including short positions or derivative positions; [363]

• the potential conflicts of interest related to the affiliations among the Sponsor, the Custodian, and the Gemini Exchange; [364]

• the legitimacy or enhanced regulatory protection that Commission approval of the proposed ETP might confer upon bitcoin as a digital asset; [365] and

• the value to the Commission of enhanced oversight over bitcoin markets from approving the proposal.[366]

Ultimately, however, additional discussion of these tangential topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove BZX's proposal.[367]

I. Basis for Disapproval

As discussed above,[368] the central factor for the Commission in its current consideration of the BZX proposal is whether it is consistent with Exchange Act Section 6(b)(5), which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[369] Although BZX argues that its proposal can satisfy these requirements because bitcoin markets are inherently difficult to manipulate,[370] and because alternative means of identifying fraud and manipulation would be sufficient,[371] the Commission concludes that, as discussed above, BZX has not established that these proffered means of compliance—alone or in combination—are sufficient to meet the requirements of Exchange Act Section 6(b)(5).[372]

Thus, the Commission believes that BZX must demonstrate with respect to this proposal that—like the listing exchanges for previously approved commodity-trust ETPs [373]—it can enter into a surveillance-sharing agreement with a regulated, bitcoin-related market of significant size. As discussed above, however, BZX has not shown that it can enter into such an agreement, because the proposal does not support a conclusion that the markets for bitcoin or derivatives on bitcoin are regulated markets of significant size.[374] Therefore, BZX has not met its burden to demonstrate that the proposed rule change is consistent with Exchange Act Section 6(b)(5), and, accordingly, the Commission is disapproving the proposed rule change.[375]

While the Commission concludes that BZX must demonstrate the ability to enter into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, and while this factor strongly supports disapproval of BZX's proposed rule change, the other factors BZX asks the Commission to weigh [376] also support the disapproval of the proposed rule change. Even considering these other factors, the Commission does not find BZX's proposed rule change to be consistent with Exchange Act Section 6(b)(5)'s requirement that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [377]

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act,

Swiderski Letter, *supra* note 35; Situation Letter, *supra* note 35; Paneque Letter, *supra* note 35; Nootenboom Letter, *supra* note 35; Chronakis Letter, *supra* note 35; Turley Letter, *supra* note 35; Kemble Letter, *supra* note 35; BZX Letter II, *supra* note 13, at 3, 8.

[359] *See* Harris Letter, *supra* note 36, at 1.

[360] *See* Barish Letter I, *supra* note 35; Barish Letter IV, *supra* note 35; Neidhardt Letter, *supra* note 35; Dylan Letter, *supra* note 35; Keeler Letter, *supra* note 35; Casey Letter I, *supra* note 35; Aronesty Letter, *supra* note 35; ARK Letter, *supra* note 35, at 10–11; Tull Letter, *supra* note 35; Stolfi Letter I, *supra* note 35; Stolfi Letter II, *supra* note 35; Anonymous Letter I, *supra* note 35; Lethuillier Letter, *supra* note 35, at 2–3; Delehanty Letter, *supra* note 35; Casey Letter II, *supra* note 35; Anonymous Letter IV, *supra* note 35; BZX Letter I, *supra* note 35, at 3, 6–7; Struna Letter, *supra* note 35.

[361] *See* Lethuillier Letter, *supra* note 35, at 2–3; Aronesty Letter, *supra* note 35; Delehanty Letter, *supra* note 35; XBT Letter, *supra* note 35; ARK Letter, *supra* note 35, at 10–11; Anonymous Letter IV, *supra* note 35; BZX Letter I, *supra* note 35, at 6–7.

[362] *See* Schulte Letter, *supra* note 35.

[363] *See* Anonymous Letter II, *supra* note 35, at 3; Tull Letter, *supra* note 35.

[364] *See* XBT Letter, *supra* note 35; Tull Letter, *supra* note 35; Stolfi Letter II, *supra* note 35; ARK Letter, *supra* note 35, at 9–10; Anonymous Letter III, *supra* note 35; BZX Letter I, *supra* note 35, at 5–6; Harris Letter, *supra* note 36.

[365] *See* Stolfi Letter I, *supra* note 35; Circle Letter, *supra* note 35; Kim Letter, *supra* note 35; Delehanty Letter, *supra* note 35; Baird Letter, *supra* note 35; Anonymous Letter II, *supra* note 35, at 3; Keeler Letter, *supra* note 35; Dalla Val Letter, *supra* note 35; Elron Letter, *supra* note 35; P. Miller Letter, *supra* note 35; Marchionne Letter, *supra* note 35; Situation Letter, *supra* note 35; Paneque Letter, *supra* note 35; Nootenboom Letter, *supra* note 35; Chronakis Letter, *supra* note 35; Johnson Letter, *supra* note 35; Bang Letter, *supra* note 35; Primm Letter, *supra* note 35; Christensen Letter, *supra* note 35; Rigsby Letter, *supra* note 35.

[366] *See* Convergex Letter, *supra* note 36, at 2.

[367] The Commission also received a statement from SolidX Management LLC, asserting that ''[t]o the extent the Commission is inclined to reverse, modify, set aside or remand for further proceedings the BatsBZX Proposed Rule Change, then in accordance with Rule 431 and the factors set forth in Rule 411(b)(2) of the Rules of Practice, the Commission should, as a matter of equity . . . reverse, modify, set aside or remand for further proceedings its March 28, 2017 Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust under NYSE Arca Equities Rule 8.201 (Release No. 34–80319; File No. SR–NYSEArca-2016–101).'' SolidX Letter, *supra* note 36, at 1. No timely petition to review the March 28, 2017, disapproval order has been received from any party and, under the Rule 431(c) of Commission's Rules of Practice, the period for the Commission to order review of the issuance of that disapproval order by delegated authority ended on April 7, 2017.

[368] *See* Section I, *supra.*

[369] 15 U.S.C. 78f(b)(5).

[370] *See* Sections III.B.1(a) and III.B.2(a), *supra.*

[371] *See* Section III.C.1, *supra.*

[372] *See* Sections III.B.1(b), III.B.2(b), and III.C.2, *supra.*

[373] *See* Section III.D.2, *supra.*

[374] *See* Sections III.E.1(b), III.E.2(b), and III.E.3(b), *supra.*

[375] In disapproving the proposed rule change, as modified by Amendments No. 1 and 2, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f); *see also supra* notes 322–326, 329 and accompanying text. According to BZX, the Sponsor believes that the Shares will represent a cost-effective and convenient means of gaining investment exposure to bitcoin similar to a direct investment in bitcoin, allowing investors to more effectively implement strategic and tactical asset allocation strategies that use bitcoin, with lower cost than that associated with the direct purchase, storage, and safekeeping of bitcoin. *See* Amendment No. 1, *supra* note 1, 81 FR at 76662; *see also* Overdahl Letter, *supra* note 36, at 13 (asserting that approval of bitcoin ETP would improve the availability of investment and portfolio diversification opportunities for investors); Lewis Letter I, *supra* note 65, at 3, 11–16 (asserting that a bitcoin-based ETP would enable ordinary investors to construct more efficient portfolios). Regarding competition, BZX has asserted that approval of the proposed rule change ''will enhance competition among market participants, to the benefit of investors and the marketplace.'' Amendment No. 1, *supra* note 1, 81 FR at 76669. BZX also asserts that the Shares ''would facilitate capital formation in the bitcoin marketplace in a manner nearly identical to other commodity-trust exchange traded products.'' BZX Letter II, *supra* note 13, at 3, 30. Additionally, one commenter asserts that approval of the Proposal would allow the United States to continue its ''historic technological leadership,'' Baird Letter, *supra* note 35, while another commenter asserts that, with the approval of the Proposal, ''bitcoin might become a much larger part of the world economy at risk.'' Barish Letter III, *supra* note 35. The Commission recognizes that BZX and commenters assert the economic benefits described above, but, for the reasons discussed throughout, the Commission is disapproving the proposed rule change because it does not find that the proposed rule change is consistent with the Exchange Act.

[376] *See* Section III.G, *supra.*

[377] 15 U.S.C. 78f(b)(5).

that the proposed rule change, as modified by Amendments No. 1 and 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (Mar. 16, 2017), is set aside and, pursuant to Section 19(b)(2) of the Exchange Act, SR-BatsBZX–2016–30 is disapproved.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2018–16427 Filed 7–31–18; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0346]

Stellus Capital SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Stellus Capital SBIC, L.P., 4400 Post Oak Parkway, Suite 2200, Houston, TX 77027, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Stellus Capital SBIC, L.P. proposes to provide loan financing to KelleyAmerit Holdings, Inc. (d/b/a Amerit Fleet Solutions), 1331 North California Blvd., Suite 150, Walnut Creek, CA 94596.

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because Stellus Capital SBIC, L.P., seeks to purchase the loan financing to KelleyAmerit Holdings, Inc. from Stellus Capital Investment Corp., an Associate of Stellus Capital SBIC, L.P. Therefore, this transaction is considered discharging an obligation of an Associate, requiring a prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

A. Joseph Shepard,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2018–16414 Filed 7–31–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0435]

Ironwood Mezzanine Fund IV–A, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Ironwood Mezzanine Fund IV–A, L.P., 45 Nod Road, Suite 2, Avon, CT 06001, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with a financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Ironwood Mezzanine Fund IV–A, L.P. proposes to provide debt and equity financing for the purpose of purchasing a subsidiary (Capewell Intermediate Holding, LLC) from an Associate, Capewell Holding, LLC. Capewell Holding, LLC is an Associate because Ironwood Mezzanine Fund III–A L.P., an Associate of Mezzanine Fund IV–A, L.P., owns more than ten percent of Capewell Holding, LLC.

The financing is brought within the purview of § 107.730(a) of the Regulations because proceeds from the transaction will directly benefit Associates Ironwood Mezzanine Fund III, L.P. and Ironwood Mezzanine Fund III–A, L.P.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2018–16415 Filed 7–31–18; 8:45 am]

BILLING CODE P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36208]

Progressive Rail Incorporated—Continuance in Control Exemption—St. Paul & Pacific Railroad Company, LLC

Progressive Rail Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of St. Paul & Pacific Railroad Company, LLC (SPR), upon SPR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *St. Paul & Pacific Railroad Company, LLC—Change in Operator Exemption—Santa Cruz and Monterey Bay Railway Company,* Docket No. FD 36207. In that proceeding, SPR seeks an exemption under 49 CFR 1150.31 to assume operations over approximately 31 miles of rail line (the Line) owned by the Santa Cruz County Regional Transportation Commission extending from milepost 0.433 at Watsonville Junction to milepost 31.39 at Davenport, Cal.

The earliest this transaction may be consummated is August 15, 2018, the effective date of the exemption (30 days after the verified notice was filed). PGR states that it intends to consummate the transaction on August 16, 2018.

PGR will continue in control of SPR upon SPR's becoming a Class III rail carrier and remains in control of Class III carriers Airlake Terminal Railway Company, LLC, Central Midland Railway Company, Iowa Traction Railway Company, Iowa Southern Railway Company, Piedmont & Northern Railroad Company, and Chicago Junction Railway Company.

PGR states that: (1) The rail line to be operated by SPR does not connect with any other railroads in the PGR corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect this line with any other railroad in the PGR corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because

all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 8, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36208, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–2832.

Board decisions and notices are available on our website at *WWW.STB.GOV.*

Decided: July 27, 2018.

By the Board, Amy C. Ziehm, Acting Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2018–16477 Filed 7–31–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36207]

St. Paul & Pacific Railroad Company, LLC—Change in Operators Exemption—Santa Cruz and Monterey Bay Railway Company

St. Paul & Pacific Railroad Company (SPR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to assume operations over approximately 31 miles of track (the Line) owned by the Santa Cruz County Regional Transportation Commission (RTC) extending from milepost 0.433 at Watsonville Junction to milepost 31.39 at Davenport, Cal. The verified notice indicates that the Line was formerly operated by the Santa Cruz and Monterey Bay Railway Company (SCM) before SCM's cessation of operations in June 2018. Based on projected annual revenues, SPR expects to be a Class III carrier after consummation of the proposed transaction. SPR states that it will enter into an operating agreement with RTC governing SPR's operation of, and provision of rail common carrier service on, the Line. Pursuant to a separate agreement, SCM will transfer its permanent and exclusive freight operations to SPR.

This transaction is related to a concurrently filed verified notice of exemption in *Progressive Rail Inc.—Continuance in Control Exemption—St. Paul & Pacific Railroad Company, LLC,* Docket No. FD 36208, in which Progressive Rail Incorporated, SPR's parent company, seeks to continue in control of SPR upon SPR's becoming a Class III rail carrier.

SPR states that the proposed operation of the Line does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. SPR certifies that its annual rail revenues as a result of this transaction are not expected to exceed $5 million, and it will not result in SPR becoming a Class I or Class II rail carrier. Under 49 CFR 1150.32(b), a change in operator requires that notice be given to shippers. SPR states that it has provided notice of the proposed change in operators to the four shippers on the Line.

The earliest this transaction may be consummated is August 15, 2018, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 8, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36207, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–2832.

Board decisions and notices are available on our website at *WWW.STB.GOV.*

Decided: July 27, 2018.

By the Board, Amy C. Ziehm, Acting Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2018–16478 Filed 7–31–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2018–0008–N–5]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Requests (ICRs) abstracted below. Before submitting these ICRs to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before October 1, 2018.

ADDRESSES: Submit written comments on the ICRs 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–XXXX'' (the relevant OMB control number for each ICR is listed below), 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 ICRs 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 may 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.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Railroad Locomotive Safety Standards and Event Recorders.

OMB Control Number: 2130–0004.

Abstract: The Locomotive Safety Standards at 49 CFR part 229 require railroads to inspect, repair, and maintain locomotives, including their event recorders to ensure they are safe and free of defects. Crashworthy locomotive event recorders provide FRA with verifiable factual information about how trains are operated. These devices are used by FRA and State inspectors for part 229 enforcement. The information garnered from crashworthy event recorders is used by railroads to monitor railroad operations and by railroad employees (locomotive engineers, train crews, dispatchers) to improve train handling, and promote the safe and efficient operation of trains throughout the country, based on a surer knowledge of different control inputs.

Type of Request: Extension with Change of a Currently Approved Information Collection.

Affected Public: Businesses.

Form(s): FRA F 6180.49A.

Respondent Universe: 741 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.9—Movement of Non-Complying Locomotives.	44 Railroads	21,000 tags	1 minute	350
229.15—Remote control locomotive—tagging to indicate in remote control.	44 Railroads	3,000 tags	2 minutes	100
—Repair record of defective OCU linked to remote control locomotive.	44 Railroads	300 records	5 minutes	25
229.17—Accident Reports	44 Railroads	1 report	15 minutes	.25
229.20—Electronic Recordkeeping—Automatic notice to RR each time locomotive is due for inspection or maintenance.	44 Railroads	21,000 notifications	1 second	6
229.21—Daily Locomotive Inspection	741 Railroads	1,674,400 insp. reports + 5,215,600 insp. reports/records.	31 minutes + 33 minutes.	3,733,687
—Written Reports of MU Locomotive Inspections.	741 Railroads	230,000 written reports	13 minutes	49,833
Locomotive Inspection & Repair Record—Form FRA F 6180.49A.	741 Railroads	4,000 forms	16 minutes	1,067
229.23—Periodic Inspection: Secondary record of information on Form FRA F 6180.49A.	741 Railroads	9,500 secondary records	2 minutes	317
—List of defects/repairs during inspection provided to RR employees + copies of lists.	741 Railroads	4,000 lists + 4,000 copies.	2 minutes + 2 minutes	266
—Document from railroad to employees of all tests conducted since last periodic inspection.	741 Railroads	9,500 documents/ records.	2 minutes	317
229.31—Main reservoir tests: Periodic inspections—repairs & adjustments, & data on Form 49A.	741 Railroads	9,500 tests/forms	8 hours	76,000
229.33—Out-of-Use Credit for Locomotives	741 Railroads	500 out-of-use notations	5 minutes	42
Recordkeeping Requirements				
229.25—Periodic Inspection of Event Recorders: Written Copy of Instructions—Amendments.	741 Railroads	200 amendment copies	15 minutes	50
—Data Verification Readout of Event Recorder.	741 Railroads	4,025 readout records/ reports.	90 minutes	6,038
—Pre-Maintenance Test Failures of Event Recorder.	741 Railroads	700 test failure notations	30 minutes	350

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.135—Removal of event recorder from service—Tags.	741 Railroads	1,000 removal tags	1 minute	17
—Preserving Locomotive Event Recorder Accident Data—reports.	741 Railroads	3,100 data reports	15 minutes	775
Other Requirements				
229.27—Annual tests of event recorders w/self-monitoring feature displaying a failure indication—tests.	741 Railroads	700 tests/records	90 minutes	1,050
229.29—Calibration of Locomotive Air Flow Meter—Tests.	741 Railroads	88,000 tests/records	60 seconds	1,467
229.46—Tagging locomotive with inoperative or ineffective automatic/independent brake that can only be used in trailing position.	741 Railroads	2,100 tags	2 minutes	70
229.85—Marking of all doors, cover plates, or barriers having direct access to high voltage equipment with words "Danger High Voltage" or with word "Danger".	741 Railroads	1,000 re-paintings/decals	3 minutes	50
229.123—Locomotives equipped with a pilot, snowplow, & plate with clearance above 6 inches—Marking/stenciling with words "9 inch Maximum End Plate Height, Yard or Trail Service Only".	741 Railroads	20 markings/stencils	4 minutes	1
—Notation in Remarks section of Form FRA F6180.49A of pilot, snowplow, or end plate clearance above 6 inches.	741 Railroads	20 notations	2 minutes	1
Subpart E				
229.303—Requests to FRA for on-track testing of products outside a facility.	741 Railroads	20 requests	8 hours	160
229.307—Safety Analysis for each product subject to this Subpart—Document establishing minimum requirements.	741 Railroads	50 safety analysis documents.	240 hours	12,000
229.309—Safety critical changes to product subject to this Subpart—Notice to FRA.	741 Railroads	10 notifications	16 hours	160
—Report by product suppliers and private owners to railroads of any safety-critical changes to product.	3 Manufacturers	30 reports	8 hours	240
229.311—Notice to FRA by railroad before placing product in service.	741 Railroads	50 notifications	2 hours	100
—Railroad document provided to FRA upon request demonstrating product meets Safety Analysis requirements for life cycle of product.	741 Railroads	50 documents	2 hours	100
—Railroad maintenance of data base of all safety relevant hazards encountered after product is placed in service.	741 Railroads	50 databases	4 hours	200
—Written report to FRA disclosing frequency of safety relevant hazards for product exceeding threshold set forth in Safety Analysis.	741 Railroads	10 written reports	2 hours	20
—Final Report to FRA on results of analyses and counter measures to reduce frequency of safety related hazards.	741 Railroads	10 written final reports	4 hours	40
229.313—Product testing results and records	741 Railroads	120,000 product testing records.	5 minutes	10,000
229.315—Railroad maintenance of Operations and Maintenance Manual containing all documents related to installation, maintenance, repair, modification, & testing of a product subject to this Part.	741 Railroads	45 manuals + 255 manuals.	40 hours + 5 hours	3,075
—RR Configuration Management Control Plan.	741 Railroads	45 plans + 255 plans	8 hours + 2 hours	870
—Positive ID of safety-critical components	741 Railroads	60,000 identified components.	5 minutes	5,000
229.317—RR Establishment and Implementation of Training Qualification program for products subject to this Subpart.	741 Railroads	300 programs	40 hours	12,000
—Employees trained under RR program	741 Railroads	10,000 trained employees.	60 minutes	10,000

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Periodic refresher training of employees	741 Railroads	1,000 re-trained employees.	60 minutes	1,000
—RR regular and periodic evaluation of effectiveness of its training program.	741 Railroads	300 evaluations	4 hours	1,200
—RR record of individuals designated as qualified under this Section.	741 Railroads	10,000 records	10 minutes	1,667
Appendix F to Part 229—Guidance for Verification and Validation of Products—3rd Party Assessments.	741 Railroads/3 Manufacturers.	1 3rd party assessment	4,000 hours	4,000
—Final Report of Assessment	741 Railroads/3 Manufacturers.	1 final report	80 hours	80

Total Estimated Annual Responses: 7,509,648.

Total Estimated Annual Burden: 3,933,791 hours.

Title: Railroad Signal System.

OMB Control Number: 2130–0006.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System), and 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from signal failure (*e.g.,* failure of a signal appliance, device, method or system to function or indicate as required by 49 CFR part 236 that results in a more favorable aspect than intended) or other condition hazardous to the movement of a train. Section 233.7 provides that each railroad must report signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14.

Part 235 of title 49 of the Code of Federal Regulations sets forth the specific conditions under which FRA will approve the modification or discontinuance of railroad signal systems. These regulations also describe the process that should be followed by a railroad to seek such an approval. The application process prescribed under 49 CFR part 235 enables FRA to obtain the necessary information to make logical and informed decisions concerning railroad requests to modify or discontinue signal systems. Section 235.5 requires railroads to apply for FRA approval to discontinue or materially modify railroad signal systems. However, section 235.7 cites signal system changes that do not require FRA approval such as removal of an interlocking where a drawbridge has been permanently closed by the formal approval of another governmental agency. Section 235.8 allows railroads to seek relief from the requirements in 49 CFR part 236. Sections 235.10, 235.12, and 235.13 explain where the application must be submitted, what information must be included, what the format should be, and who is authorized to sign the application. FRA provides public notice concerning applications for relief and allows individuals and organizations to protest the granting of an application for relief. Section 235.20 describes the protest process, including essential information that must accompany the protest, the address for filing the protest, the time limit for filing the protest, and the requirement that a person requesting a public hearing explain why written statements cannot be used to explain his or her position.

49 CFR part 236 contains FRA's signal system requirements. Section 236.110 requires that the results of signal system tests required under §§ 236.102–109; §§ 236.376–236.387; §§ 236.576–577; and §§ 236.586–589 be recorded on pre-printed forms provided by the railroad or by electronic means, subject to FRA approval. These forms must show the name of the railroad, place and date of the test conducted, type of equipment tested, results of the test, describe any repairs, replacements, and adjustments performed on the equipment that has been tested, and the condition in which the equipment was left. This section also requires that the employee conducting the test must sign the form and that the record be retained at the office of the supervisory official. Test results made in compliance with § 236.587, must be retained for 92 days. The results of all other tests required under §§ 236.102–109; §§ 236.376–236.387; §§ 236.576–577; § 236.586; and §§ 236.588–589, including results of periodic tests, must be retained until the next record is filed, but no less than one year. Additionally, § 236.587 requires each railroad to make a departure test of the cab signal, automatic train stop, or train control devices on locomotives before the locomotives enter equipped territory. This section further requires that whoever performs the departure test must certify in writing that the test was properly performed. The certification and test results must be posted in the locomotive cab with a copy of the certification and test results retained at the office of the supervisory official. However, if it is impractical to leave a copy of the certification and test results at the location where the test is conducted, then the test results must be transmitted to the dispatcher or another designated official who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for 92 days. Finally, § 236.590 requires railroads to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives as required by § 229.29(a).

Type of Request: Extension with Change of a Currently Approved Information Collection.

Affected Public: Businesses.

Form(s): FRA F 6180.14.

Respondent Universe: 1 Class I railroad.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
233.5—Accidents resulting from signal failure—telephone report to FRA.	741 Railroads	10 telephone calls	30 minutes	5

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
233.7—Signal Failure Reports	741 Railroads	20 reports	15 minutes	5
235.5—Filing of Applications for changes to Signal Systems.	80 Railroads	20 applications	10 hours	200
235.8—Relief from requirements of Part 236 of this Title.	80 Railroads	10 relief requests/applications.	2.5 hours	25
235.20—Protests against application for relief from Part 236 requirements.	80 Railroads	20 protest letters	30 minutes	10
236.110—Results of Tests made in compliance with sections 236.102–109; sections 236.376–387; section 236.576; section 236.577; sections 236.586–589; and sec. 236.917(a)—Records.	80 Railroads	796,161 forms + 140,499 forms.	27 minutes. 15 minutes	393,397
236.587—Departure Test—Record	18 Railroads	730,000 tests/records	4 minutes	48,667
236.590—Pneumatic Apparatus—Inspection, cleaning, and results of Inspection—Record.	18 Railroads	6,697 stencilings/tags	22.5 minutes	2,511

Total Estimated Annual Responses: 1,673,437.

Total Estimated Annual Burden: 444,820 hours.

Title: Inspection Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment (Power Brakes).

OMB Control Number: 2130–0008.

Abstract: Recognizing the importance of upgrading rail technologies, Congress in 1980 passed the Rock Island Railroad Transition and Employee Assistance Act (the ''Rock Island Act''), which, inter alia, provides statutory relief for the implementation of new technologies. More specifically, when certain statutory requirements preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations, the applicable section of the Rock Island Act, currently codified at 49 U.S.C. 20306, provides the Secretary of Transportation with the authority to grant an exemption to those requirements based on evidence received and findings developed at a hearing. In accordance with that statute, FRA held a public hearing and invoked its discretionary authority under 49 U.S.C. 20306 to provide a limited exemption from § 20303 for freight trains and freight cars operating with electronically controlled pneumatic (ECP) brake systems. In doing so, FRA revised the regulations governing freight power brakes and equipment in October 2008 by adding a new subpart G. The revisions are designed to provide for and encourage the safe implementation and use of ECP brake system technologies. These revisions contain specific requirements relating to design, interoperability, training, inspection, testing, handling defective equipment, and periodic maintenance related to ECP brake systems. The final rule also provides flexibility to facilitate the voluntary adoption of this advanced brake system technology. The collection of information is used by FRA to monitor and enforce regulatory requirements related to power brakes on freight cars, including the requirements related to ECP brake systems. The collection of information is also used by locomotive engineers and road crews to verify that the terminal air brake test has been performed in a satisfactory manner.

Type of Request: Extension with Change of a Currently Approved Information Collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 1 Class I railroad.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.27—Annual Tests	30,000 Locomotives	120,000 tests	15 minutes	30,000
232.3—Applicability—Cars Not Used in Service	741 Railroads	8 cards	10 minutes	1
232.7—Waivers	741 Railroads	10 petitions	160 hours	1,600
232.15—Movement of Defective Equipment	1,620,000 Cars/locos	128,400 tags	2.5 minutes	5,350
—Notice of Defective Car/Locomotive and Restrictions.	1,620,000 Cars/locos	25,000 notices	3 minutes	1,250
232.17—Special Approval Procedure	741 Railroads	1 petition	100 hours	100
—Petitions—Pre-Revenue Svc Plans	741 Railroads	1 petition	100 hours	100
—Copies of Petitions—Special Approval	741 Railroads	1 petition	20 hours	20
—Statements of Interest	Public/Railroads	4 statements	8 hours	32
—Comments on Special Approval Procedure Petition.	Public/Railroads	13 comments	4 hours	52
232.103—General Requirements for All Train Brakes.	114,000 cars	70,000 stickers	10 minutes	11,667
—RR Plan identifying locations or circumstances when equipment left on a main track or siding unattended.	741 Railroads	1 revised plan	10 hours	10
—Notification to FRA that railroad has developed plan.	741 Railroads	1 notification	30 minutes	1
—Securement job briefings	741 Railroads	23,400,000 briefings	30 seconds	195,000
—Inspection of proper securement by qualified employee of unattended equipment that a non-railroad emergency responder has been on, under, or between.	741 Railroads	12 inspections	4 hours	48

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
232.105—General Requirements for Locomotives.	30,000 Locomotives	30,000 forms	5 minutes	2,500
—Inspection of operative exterior locking mechanism on locomotive left unattended outside of a yard but not on a track directly adjacent to the yard.	30,000 Locomotives	30,000 inspections/records.	30 seconds	250
—Broken exterior locking mechanism on locomotive requiring repair.	30,000 Locomotives	73 repaired mechanisms/records.	60 minutes + 15 seconds.	73
232.107—Air Source Requirements—Plans	10 New Railroads	1 plan	40 hours	40
—Amendments to Plan	50 Existing Plans	10 amendments	20 hours	200
—Record Keeping	50 Existing Plans	1,150 records	20 hours	23,000
232.109—Dynamic Br. Requirements—Rcd	741 Railroads	1,656,000 rcd	4 minutes	110,400
—Repair of Inoperative Dynamic Brakes	30,000 Locomotives	6,358 records	4 minutes	424
— Locomotives w/Inoperative Dynamic Br.	30,000 Locomotives	6,358 tags	30 seconds	53
—Deactivated Dynamic Brakes: Markings	8,000 locomotives	10 markings	5 minutes	1
—Rule Safe Train Handling Procedures	5 New Railroads	5 oper. rules	4 hours	20
—Amendments	741 railroads	15 amendments	1 hour	15
—Over Speed Top Rules—5 MPH Increase.	741 railroads	5 requests	20.5 hours	103
—Locomotive Engineer Certification Programs—Dynamic Brakes Training.	5 new railroads	5 amendments	16 hours	80
232.111—Train Information Handling	5 New Railroads	5 procedures	40 hours	200
—Amendments	100 Railroads	100 am. proc.	20 hours	2,000
—Reports to Train Crews	741 Railroads	2,112,000 rpts	10 minutes	352,000
232.203—Training Requirements: Training Programs—Subsequent Years.	15 Railroads	5 programs	100 hours	500
—Amendments to Written Program	741 Railroads	741 programs	8 hours	5,928
—Training Records	741 Railroads	67,000 records	8 minutes	8,933
—Training Notifications	741 Railroads	67,000 notices	3 minutes	3,350
—Validation/Assessment Plans	741 Railroads	1 plan + 741 copies	40 hrs./1 min	51
—Amendments to Validation/Assessment Plans.	741 Railroads	50 revised plans	20 hours	1,000
232.205—Class I Brake Test—Initial Terminal Insp.	741 Railroads	1,646,000 notices	45 seconds	20,575
232.207—Class I A Brake Tests: 1000 Mile Insp,—Designation of locations where performed:—Subsequent Years.	741 Railroads	1 des. list	1 hour	1
—Notification to FRA headquarters and pertinent region within 24 hours that designation list has changed due to emergency situation.	741 Railroads	250 notices	10 minutes	42
232.209—Class II Brake Tests—Communication of results of roll-by inspections to train operator.	741 Railroads	159,740 comments	3 seconds	133
232.213—Extended Haul Trains—Designations of such trains in writing to FRA.	83,000 Long Distance Train Movements.	250 letters of designation.	15 minutes	63
232.303—General Requirements—Repair Track Brake Test: Tagging cars needing to be moved for such tests.	1,600,000 Freight Cars	5,600 tags	5 minutes	467
—Stenciling/marking of location of last repair track brake test/single car test required by section 232.305.	1,600,000 Freight Cars	240,000 marks/stencillings.	5 minutes	20,000
232.305—Single Car Tests/Records	1,600,000 Freight Cars	240,000 tests/records	60 minutes	240,000
232.307—Request to Modify Single Car Air Brake Test Procedures.	AAR	1 request + 3 copies	20 hours + 5 minutes	20
—Statement Affirming That Request Copies Have been Served on Designated Employee Representatives.	AAR	1 statement + 4 copies	30 minutes + 5 minutes	1
—Comment on Modification Request	RR Industry/Public/ Interested Parties	2 comments	8 hours	16
232.309—Equipment and devices performing single car air brake tests: Testing and Calibrations.	640 Shops	5,000 tests	30 minutes	2,500
232.403—Design Standards For One-way EOT Devices—Request to FRA for unique code for each rear unit.	245 Railroads	12 requests	5 minutes	1
232.407—Operations Requiring 2-Way EOTs: Communications between helper locomotive engineer with engineer on the head end of the train.	245 Railroads	50,000 radio chats	30 seconds	417
232.409—Inspection and Testing of 2-Way EOTs: Notice to engineer of successful test.	245 Railroads	447,500 notices	30 seconds	3,729

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Testing telemetry equipment for accuracy: Date and location of last test or calibration affixed to outside of both front & rear unit.	245 Railroads	1,350 markings	60 seconds	23
232.503—Process to Introduce New Brake System Technology—Request to FRA for special approval.	741Railroads	1 request/letter	60 minutes	1
—Pre-Revenue Service Demonstration of New Brake Technology: Request to FRA for approval prior to using in revenue service.	741 Railroads	1 request	3 hours	3
232.505—Pre-Revenue Service Acceptance Testing Plan: Maintenance Procedure—Subsequent Years.	741 Railroads	1 procedure	160 hours	160
—Amendments	741 Railroads	1 amendment	40 hours	40
—Design Descriptions—Petitions	741 Railroads	1 petition	67 hours	67
—Results Pre-Revenue Service Acceptance Testing.	741 Railroads	1 report	13 hours	13
—Description of Brake Systems Technologies Previously Used in Revenue Service.	741 Railroads	1 description	40 hours	40
232.603—ECP Requirements: Brakes—Modification of Standards: AAR or Industry Representative request to FRA.	4 Railroads/AAR	1 request + 2 copies	8 hours + 5 minutes	8
—RR Statement Affirming Copy of Modification Request to Employee Reps.	4 Railroads	4 statements+ 24 copies	60 minutes + 5 minutes	6
—Comments on Modification Request	Public/Interested Parties.	4 comments	2 hours	8
232.607—ECP Trains Class I Brake Test & Inspection/: Notification to locomotive engineer it was successfully performed.	4 Railroads	750 tests + 750 notices	90 minutes + 45 seconds.	1,134
—Cars Added en Route—Tests/Notifications.	4 Railroads	50 tests + 50 notices	60 minutes + 45 seconds.	51
—Non-ECP Cars Added—Inspections and Tagging of Defective Equipment.	2000 Cars	25 insp. + 50 tags	5 minutes + 2.5 minutes.	4
232.609—Handling of Defective Equipment w/ ECP Brake Systems—Tagging.	25 Cars	25 tags	2.5 minutes	1
—Train in ECP Mode w/Less Than 85% of Cars w/Operative Brakes—Insp. + Tagging.	20 Cars	10 insp. + 20 tags	5 minutes + 2.5 minutes.	2
—Freight Cars w/ECP Systems Found with Defective Non-Safety Appliance—Tagging.	25 Cars	25 tags	2.5 minutes	1
—Conventional Train Operating with ECP Stand Alone Brake Systems—Tagging.	25 Cars	50 tags	2.5 minutes	2
—Procedures for Handling ECP Brake System Repairs.	1 Railroad	1 procedure	24 hours	24
—Submission to FRA of ECP Brake System Repair Locations—Lists.	1 Railroad	1 list	8 hours	8
—Notice to FRA of Change in List	1 Railroad	1 notification	60 minutes	1
232.611—Periodic Maintenance: Inspection & Repair of ECP Cars Before Release from Repair Shop or Track.	500 Freight Cars	300 inspections and records.	10 minutes	50
—Petitions for Special Approval of Pre-Revenue Service Acceptance Testing Plan.	AAR	1 petition + 2 copies	24 hours+ 5 minutes	24
—Single Car Brake Test on ECP Retrofitted Cars.	2,500 Freight Cars	50 tests/records	45 minutes	38
—Modification of Single Car Test Standard	AAR	1 procedure	40 hours	40

Total Estimated Annual Responses: 30,519,495.

Total Estimated Annual Burden: 1,045,550 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 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.

Juan D. Reyes III,

Chief Counsel.

[FR Doc. 2018–16403 Filed 7–31–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0124]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TEDDY BEAR; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 31, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0124. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TEDDY BEAR is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Occasional seasonal local charters up to 6 passenger. Maximum 50 miles from home port of Shelter Island, NY.''

—GEOGRAPHIC REGION: ''New York (excluding New York Harbor), Connecticut, Rhode Island''

The complete application is given in DOT docket MARAD–2018–0124 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: July 26, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–16406 Filed 7–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0123]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel NINE LIVES; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 31, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0123. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NINE LIVES is:

—Intended Commercial use of Vessel: ''The intended use of the vessel will be to provide a day charter service of 6 passengers or less, for no more than 6 hours a day and no more than 6 times a month. This is a single boat charter service that will assist with the boat's costs of ownership.''

—Geographic Region: ''California''

The complete application is given in DOT docket MARAD–2018–0123 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver

application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: July 26, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–16405 Filed 7–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0122]

Request for Comments on the Renewal of a Previously Approved Information Collection: Maritime Administration Service Obligation Compliance Annual Report

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to determine if a graduate of the U.S. Merchant Marine Academy or a State maritime academy student incentive payment graduate is complying with the terms of the service obligation. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before October 1, 2018.

ADDRESSES: You may submit comments by Docket No. MARAD–2018–0122 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Danielle Bennett, 202–366–7618, Office of Maritime Labor and Training, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–458, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Maritime Administration Annual Service Obligation Compliance Report.

OMB Control Number: 2133–0509.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: 46 U.S.C. 51306 and 46 U.S.C. 51509 imposes a service obligation on every graduate of the U.S. Merchant Marine Academy and every State maritime academy student incentive payment graduate. This mandatory service obligation is for the Federal financial assistance the graduate received as a student. The obligation consists of (1) maintaining a U.S. Coast Guard merchant mariner credentials with an officer endorsement; (2) serving as a commissioned officer in the U.S. Naval Reserve, the U.S. Coast Guard Reserve or any other reserve unit of an armed force of the United States following graduation from an academy (3) serving as a merchant marine officer on U.S.-flag vessels or as a commissioned officer on active duty in an armed or uniformed force of the United States, NOAA Corps, PHS Corps, or other MARAD approved service; and (4) report annually on their compliance with their service obligation after graduation.

Respondents: Graduates of the U.S. Merchant Marine Academy and State maritime academy student incentive payment graduates.

Affected Public: Individuals and/or household.

Estimated Number of Respondents: 2100.

Estimated Number of Responses: One response per Respondent.

Estimated Hours/Minutes per Response: 20 minutes.

Annual Estimated Total Annual Burden Hours: 700.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

Dated: July 26, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–16407 Filed 7–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0125]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LA DOLCE VITA; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 31, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0125. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.*

All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LA DOLCE VITA is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Luxury Cruises''

—GEOGRAPHIC REGION: ''Illinois, Michigan, Wisconsin, Florida''

The complete application is given in DOT docket MARAD–2018–0125 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: July 26, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–16412 Filed 7–31–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Claim for Lost, Stolen, or Destroyed U.S. Savings Bonds and Supplemental Statement for U.S. Securities

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Claim For Lost, Stolen, or Destroyed U.S. Savings Bonds and Supplemental Statement For U.S. Securities.

DATES: Written comments should be received on or before October 1, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Claim For Lost, Stolen, or Destroyed U.S. Savings Bonds and Supplemental Statement For U.S. Securities.

OMB Number: 1530–0021.

Form Number: FS Form 1048 and FS Form 2243.

Abstract: The information is requested to issue owners substitute securities or payment in lieu of lost, stolen or destroyed securities.

Current Actions: Revision of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 140,000.

Estimated Time per Respondent: 20 minutes for FS Form 1048, and 5 minutes for FS Form 2243.

Estimated Total Annual Burden Hours: 44,166 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–16443 Filed 7–31–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Request by Fiduciary for Distribution of United States Treasury Securities

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the ''Request By Fiduciary For Distribution of United States Treasury Securities''.

DATES: Written comments should be received on or before October 1, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information

to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request By Fiduciary For Distribution of United States Treasury Securities.

OMB Number: 1530–0035.

Form Number: FS Form 1455.

Abstract: One or more fiduciaries (individual or corporate) must use this form to establish entitlement and request distribution of United States Treasury Securities and/or related payments to the person lawfully entitled due to termination of a trust, distribution of an estate, attainment of majority, restoration to competency, or other reason.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 17,700.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 8,850.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2018.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2018–16442 Filed 7–31–18; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending June 30, 2018. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABBASI	SAADIA	
ABERLE	STEPHEN	DANIEL
ABOU-RICHEH	JANA	RIF
ABRAMS	TARA	BETH
ACEVEDO	PATRICIA	A.
ACKERMANN	FELIX	
ADAM	MICHAEL	BRUCE
AFSHAR	ABDOL	KARIM
AGOPIAN	CHRISTINE	MARY
AHARON	SHIRA	
AHMAD	FIRAS	MICHAEL
AINIKKAL	DAWN	MARIE
AITCHISON	SANDRA	ELIZABETH
Akama	Kazuko	
Akama	Kotaro	
AKAMA	SANAKO	
AL ABDALI	LAMEES	ABDULRAHMAN
AL-ATTAR	MOHAMMAD	KHALED
AL-HEMEL	SALEH	MOHAMMED
AL-HENDI	FATEMA	ABDULLA
AL-IBRAHIM	NASER	ABDULHAMID
ALIOTH	LUCIE	AUDREY
ALISSANDRAKIS	ARIS	CONSTANTINE
ALLAN	SARAH	MICHELLE GRAY
ALLEN	BRADLEY	J.
ALLEN	JOYCE	E.
ALLEN	SUSANNA	CLAIRE
AL-MUZAYEN	FAISAL	HAMAD
AL-RASHID	ABDULAZIZ	
ALSAADI	SULTAN	ABDULRAHMAN
AL-SALEH	BADRYA	ADNAN ABDULLAH
ALSAYEGH	FARAH	ALI
ALSHAHIN	JUMANA	RIYAD
ALTURKI	RASHA	KHALID
ALWANI	GIRISH	PITAMBER
AMOS	ELIZABETH	JANE
AMRIATI	JENNY	E.
AMRIATI	KAREN	E.
AMRIATI	KATRINE	
AMUNDSEN	ETHEL	JOYCE

Last name	First name	Middle name/initials
AN	TAE	PONG
ANDRASKO	PETER	ANDREW
ANDREWS	AMY	BETH
ANKETELL	KRISTEEN	ZUYANG
ANLIKER-RITTMANN	MICHELE	FRANCOISE
Annabell	Tracy	Lynne
ANSON	SHELAGH	ELISABETH
ANTHONY	CYNTHIA	GAY
ARAYA	MIDORI	RUTH
ARITOMO	KELICHI	
ARMSTRONG	DANETTE	MARIE
ATHAIDE	GREG	RYAN JUDE
ATHAIDE	GREG	RYAN JUDE
AUCHARD	JUDITH	CLARE
AUGE	BRYAN	JOSEPH
AUN	RONELA	
AUSTIN	ANTON	GEORGE
BACKMAN-BEHARRY	ALICIA	MARGARET
BAGLEY	TIMOTHY	LYNN
BAIK	JI-WON	
BAINES	JESSE	JOHNSON
BAKKER	MADELINE	
BALLMER	TOBIAS	KURT
BAMBRIDGE	WENDY	MAXINE
BAQUET	LEMOYNE	DWIGHT
BARAKAT	RAMZI	TAYSEER
BARLOW	TIMOTHY	JON
BARLOW	TIMOTHY	JON
BARNABE	KAREN	ANN
BARRETEAU	MICHEL	ARMAND
BARRETT	RICHARD	JAY
BAUDAT	ALICE	SUE
BAUDAT	PAUL-EDOUARD	
BAWDEN	MARY	
BAZAROVA	CAROLINA	ALEXANDER
BEAUDET	JULIE	
BECK	MARY	ELLEN
BECK	ROBERT	DAVID
BEK	BETSY	EMMA
BEKHAZI	LARA	SALWA
BENINGER	JOSEPH	WILHELM
BENNETT	BRIDGET	ELAINE
BENNISON	ARNOLD	
BENNISON	ISABEL	
BERGER	CONNIE	
BERGLAND	YVONNE	P.
BERGMAN	BONITA	MAY
BERTRAND-DALECHAMPS	PAULINE	ISABELLE MARIE
BEZY	NICHOLAS	BRIAN
BHASIN	PADMA	
BHATT	KRUPA	ANKUR
BICK	WILL	JAMES
BIGGS	MARY	ELLEN
BISHOP	DAVID	
BISHOP	GILLIAN	
BLAGDON	CHANTAL	MARIE
BLANC	JEREMIE	PAUL ANDRE
BLAND	JESSICA	SUSAN
BLAUENSTEIN	ANDRIN	PATRICK
BLISS	KEVIN	ANDREW
BOETTGER	JOEL	DONALD
BOFFA	DEBORAH	CAROLYN
BOGGIANO	STEVEN	EDWARD
BOLLIGER	CORRINE	ANN
BONNETEAU	CATHERINE	DELMA LOUISE
BORGLIN	KARIN	ELISABETH
BORNOT	MARIE	C. T.
BOTHELLO	CATHERINE	EILEEN
BOTTOMLY	RICHARD	VOLNEY
BOWMAN	CLARA	JEAN
BOYCE	MARY	ELIZABETH SCHOESER
BOYD	WILLIAM	ROBERT
BRADY	KYLE	ROBERT
BRADY	TIMOTHY	PATRICK

Last name	First name	Middle name/initials
BRAND	RICHARD	JOSEPH
BRAY	SARAH	LOWSON
BRENNINKMEYER	EDWARD	THOMAS
BRENTA	PATRICI	RITA
BRIDGEMAN	ORLANDO	HARRY MARCUS
BRINKHURST	RALPH	OWEN
BROADBENT	KAY	MELISSA
BROCKLESBY	FLORENCE	A. F.
BROKENSHIRE	RICHARD	HILTS
BROOKS	DAVID	STEPHEN
BROOKS	VICTORIA	LOUISE
BROWN	CHARLES	GORDON
BROWN	COREEN	ANNA
BROWN	DEBORAH	GAILE
BROWN	PENELOPE	DIANE
BUCHI	CLAUDIA	
BURN	ANDREA	GRACE
BURNELL	ETHELDA	ELIZABETH
BUSHARA	YOUSIF	SAMI
BUTLER	JOY	FRANCES
BUTTERWORTH	JENNIFER	ANN
BYKHOVSKI	ANASTASIA	
C BURGIN	LINDA	ELLA
CAIRO	GAIA	
CALDER	RHONDA	T.
CALLAGHAN	JAMES	JOSEPH
Cameron	Nancy	Jean
CAMPBELL	CRAIG	LEBARON
CANELL	BRIAN	ANDREW
CARAMANNA	ALEXANDRA	ISIDORA
CARDONE	GIOVANNI	
CARLSON	ELIZABETH	
CARNOT	JULIEN	PIERRE
CARRADINE	WILLIAM	C.
CARTER	GAIL	DOROTHY
CARVER	NEIL	ADRIAN
CASAGRANDE	PHILIPPE	
CASHIN	ANNE	DENISE
CATES	JOHN	PATRICK
CHAN	CLAUDIA	
CHAN	KATHERINE	KA YUN
CHANDRA	CHRISTOPHER	MELVIN
CHANG	HEE	JIN SARAH
CHANG	MELODY	
CHANG	TRACY	
CHAPLIN	GILLIAN	RAU
CHARROT	CATHERINE	CHARLOTTE
CHASSELL CASTON	KELTY	PETER
CHELICO	MICHAEL	A.
CHEN	CONNIE	
CHEN	MICHAEL	BRANDON
CHEN	SONIA	YEASHOU
CHENG	CARMEN	
CHI	CHIA	LING
CHIANG	CHUNG-CHIEN	
CHIEN	JOSEPH	MING TSEN
CHING	JASON	YUANSHEN
CHIUNTI	MICHELLE	IRENE
CHO	AE	NA
CHOE	TAE	KYONG NAM
CHOI	ALVIN	KILWON
CHOI	BLUELLE	SOUNGAH
CHRISTENSEN	CHRISTA	MARIE
CHRISTENSEN	CHRISTY	LYNN
CHRISTENSON	MARCUS	RICHARD
CHUA	JIN	CHOU
CHUNG	AARON	TIGER
CISKE	IVAN	MICHAEL
CLARK	SEAN	C.
CLARK	SEAN	MONTGOMERY
CLAYTON	CHARLES	WILLIAM
CLEVELAND	TETH	
COLLIER	PAUL	
COLLINGS	ANN	KIMBERLY P.

Last name	First name	Middle name/initials
COMEAU	DAVID	
CONDLIFFE	KEITH	DOUGLAS
CONINGS	GERT	REMI HELENE
CONNOR	JACKSON	PHILLIPS
CONTER	HENRY	JACOB
COOKE	HELEN	
COOKE	ROBERT	ALLAN
COOKE	ROBERT	ALLAN
CORCOSTEGUI	ALEJANDRO	MANUEL
CORR	LAURA	ANNE
COUGHTRIE	SARAH	LOUISE
COUPER-EDWARDS	THOMAS	
COVINGTON-KOEPP	MONIKA	E.
CRAMPTON	JESSICA	RANA
CRAWFORD	STEPHANIE	ANNA
CRESWELL	KEVIN	ALVIN
CRETNEY	MARILYNN	
CRISP	EDWARD	JOHN
CROSBY	ALAN	MIKIO
CRUICKSHANK	JOHN	MARTIN
CRUIKSHANK	SUSAN	GRAY
CULHANE	MICHAEL	CHARLES
CUNNINGHAM	SARAH	RACHEL ELIZABETH
CURTIS	DAVID	WILLIAM ALAN
DAETWYLER	MARC	PETERE
DAILLENCOURT	ELEONORE	CHRISTINE
DAINES	JEFFREY	THOMAS
DARLING-DOIDGE	JAMES	EDWARD
DAVIDOW	MIRIAM	LEHMAN
DAVIDOW	ROBERT	LEE
DAVIDSON	DANIEL	JACK
DAVIS	EDITH	J.
DAVIS	JESSICA	
DAVIS	NANCIELLEN	CELESTE
DAY	CHARLES	ANDREW
DE BECKER	CYNTHIA	IVY PATRICIA
DE COULON BERTSCHMANN	CHRISTINE	
DE SANTANA	ALEJANDRO	PEREZ
DEAVILLE	MARY	ISABEL
DECKER	ERIKA	LYNN
DEER	BENEDEK	ISTVAN ANDRAS
DEGELDER	PETER	JOHN
DELAQUIS	CHRISTOPHER	SCOTT
DEMANGOS	ELIAS	EVANGELOS
DEMANGOS	PETER	P. E.
DERGHAM	SERGE	
DERMITZEL	DANIEL	
DEUDON	MARIE	FLORENCE NATSUKO
DEVEREUX	HELEN	
DIAMOND	ANDREW	MICHAEL
DIAMOND	ANDREW	MICHAEL
DILLON	CAROLINE	ANNE TREACY
DING	MOW-SUNG	
DINGMAN	DAVID	ROSS
DISHER-MULHOLLAND	CATHERINE	
DODD	ANDREW	EVAN
DOI	ATSUSHI	ANTHONY
DOMKEN	GAELLE	
DOUGLAS	DAWN	NOELETTE
DOWN	PETER	JEREMY
DRAYER	ANNEKE	LYNDSAY
DREW	ROCKNE	HOWARD
DRURY	MARION	CAROL DRU
DUBUC	BENJAMIN	
DUFFY	THOMAS	PATRICK
DUFRESNE	ALEXANDRA	ANN
DUFRESNE	JULIEN	PIERRE
DUKE	HELEN	MICHELE
DUNANT	JESSICA	EVELYN SILBERMAN
DUNN	JEFFREY	MARK
DUNNE	DEBORRAH	ANNE
DYMENT	HEATHER	ANN
EAKINS	ANNA	THERESA
EATON	DAVID	WILLIAM SALTER

Last name	First name	Middle name/initials
EDDY	TERENCE	
EGGER	DANIEL	CHRISTOPH
EHRLICH	MICHEL	RENE
EITEL	FRANK	GOTTLIEB
EITEL	KRISTY	LEE
EL-BADAWI	TAREK	ASSEM
ELDON-EDINTON	SIMON	
ELNATSHA	RAMI	RADI
EMAIN	BRIGITTE	
EMANUEL	GRANT	
EMRICH	JUSTIN	SCOTT
ENOKIDA	SHUICHI	
ERULIN	ADELINE	MARIE-ANTOINETTE
ESMEIJER	SAMUEL	ROBERT
EVANS	NICHOLAS	ALEXANDER
FANDREY	STEPHAN	
FANDRY	STEPHAN	
FARRAN	SAMIR	JAMIL
FAXEN	ANNA	C.
FAZEL	CYRUS	HORMOZ
FERGUS	JAN	STOCKTON
FERGUSON	DOUGLAS	RALPH
FERGUSON	JEAN	MARIE
FERGUSON	MUNRO	JAMES
FERLAND	JOSEE	
FERRI	HELEN	ANNE
FILIAGGI	MARK	JOSEPH
FINK	HANA	ELISABETH
FINKAS	JAN	
FINKS	FRANCESCA	
FISCHER HECK	HEIDI	CORINNE
FISHER	KARA	EDMEAD
FITZPATRICK	ANDREW	STEPHEN
FLANAGAN MCCARTHY	KAREN	MARIE
FLECK	CAMREN	BARBOUR
FONDA	NICOLE	THOMAS
FONG	SHEILA	K.
FOO	JOSEPH	KAH-SENG
FOOTE	MITCHELL	CAMERON
FORAN	JEANNE	MARIE
FORT	FRANCOIS	JEAN
FORTINI	LINDA	ROOT
FORZANI	JODI	LYNN
FOX	KEERA	ANN
FOX	RICHARD	JOHN
FOXWELL	DONNA	MARIE
Fragniere-Van Hout	Isabelle	Anne
FRANCX	CHRISTINE	MARIE
FRANKS	LYNN	A.
FREE	KEVIN	WILLIAM
FREEMAN	SARAH	JANE
FREI	THOMAS	
FRETZ	DAVID	
FREW	STACIA	ANN
FRIES	HOWARD	FRANKLIN
FRITSCHE	JEREMY	JAMES
FRYE-VISSON	ELLEN	CARIE
FUJITA	DIANE	M.
FUJITA	LAURA	MARIE
FUJITA	MARK	K.
FUJITA	MICHELLE	LYNNE
FULCO	MARCELLA	
FURNESS	TIMOTHY	JOHAN
FUSCO	ANNAMARIA	
GABRIELCZYK	MICHAL	JOZEF
GAGE	ALEXIS	NGUYEN
GAGNON	MARY	ALICE
GALL	MAIE	NOUR-EL-DEEN
GALLUSSER	FERNANDO	REINHOLD
GAN	AZALEA	TAN
GARGOUR	JACQUES	
GARRY	JUTTA	
GAULKE	BRIAN	ROLAND
GAUTHIER	GILBERT	THELLEND

Last name	First name	Middle name/initials
GELLING	RENAE	ELEANOR
GELLNER	JULIE	
GERBIER	JEROME	PIERRE
GEROFSKY	DAVID	AARON
GHODS	NASSIM	
GHOLMIA	LISA	YAZBEK SABBAGH
GIL	ROSARIO	
GILBERT	KILIAN	TIMOTHY
GILLOW	KENNETH	CHARLES
GILMORE	LINDA	ADAMS
GINESTIE	MARTIN	FRANCOIS
GIROUX	CHANTAL	
GIVEN	HELEN	MARGARET
GOBET	NICOLE	
GOENAWAN	KENQ	
GOH	MARIANNE	JINGYI
GOMEZ	ERIC	MICHAEL
GOOD	GARY	MERVIN
GOOD	GARY	MERVIN
GOOD	LINNEA	MARCIA ALEXANDRA
GOODWIN	ELIZABETH	CHRISTINE
GOROSPE	KETURAH	MARIE
GOURD	ROBIE	
GOVERDE	MONICA	JOHANNA
GRAFTON	LAURA	LYNN
GRAFTON	MARK	CONWAY
GRAHAM	ROBERT	MICHAEL
GRAHAM	RUSSELL	ALAN
GRAMLOW	HEATHER	ANN
GRANHOLM	NILS	DOUGLAS
GRANT	TANYA	
GRANTMYRE	ANN	VIOLET
GRAY	ALICE	PATRICIA
GRAY	KAREN	LYNN
GRAY	LOREE	ANN
GRAY	PAMELA	ANN
GREBER	JUNKO	
GRECHEN	SUSAN	D.
GREEN	MARTIN	GORDON
GREGORY	ELEANOR	ANNE
GRIMLEY	SHENA	MERRYN
GRIVEL	MELANIE	ALICE BAUDAT
GROENENBOOM	APRIL	YVONNE
GROHE	JEANNETTE	SYLVIA
GROWE	AMANDA	RUTH
GUARDIA	JOSE	G.
GUERIN	DANIEL	JOSEPH
GUERIN	NACERA	
GUERTIN	JOHANNE	
GUINNESS	REBECCA	WALLIS
GUNZELMANN	MICHAEL	VINCENT
GUO	GRACE	
GWINN	TOM	HUNTER
HABERLI	HEATHER	LOUISE
HABERMAN	LISA	DANIELLE
HAIDARA	MAMADOU	
HALE	SEAN	CARL
HALTER	ROXANE	KATIE
HAN	SEONG	WEON
HANON	BLAISE	ALEXANDRE
Hansen	David	Lorenzo
HARINGMAN	YITZHAK	DAVID
HARPER	KAREN	AMANDA
HARRIS	RACHEL	SARAH
HARRIS	RACHEL	SARAH
HARRISON	DEBORAH	MAE
HAYAKAWA	NOBORU	
HAYASHI	AKIYO	
HAYASHI	TERUMI	
HAYCOCK	JAMES	RICHARD
HAYES	MARGARET	ALLEN
HEATH	KATHERINE	V.
HEIDEMAN	PATRICK	R.
HEIMER	THOMAS	MACKAY

Last name	First name	Middle name/initials
HEISLER	CLAIRE	ANN
HENDRIX	JOHN	BLAIR
HENGST	MICHAEL	ANDREW
HERMON-TAYLOR	ELEANOR	ANN
HESS	KATHRYN	PAMELA
HESS	RICHARD	PATRICK
HESSE	JULES	ROBERT
HIGASHINO	MIDORI	
HILL	KATRINA	JOY
HILL	RENEE	TYSHA
HILTON	JANICE	LINDA
HNATIW	MELISSA	GILLETTE CHANNING
HOBSON	LOUIS	ARTHUR
HOCHROTH	ADAM	MICHAEL
HODGMAN	MICAH	GABRIEL
HOFFMAN	RONI	BRIANA
HOGUE	MIDORI	
HOLBROOK	ARTHUR	WHEELER
HOLLENBERG	ELISA	MICHELLE
HOLLOX	ANTHONY	PAUL
HOLMLUND	KATHLEEN	MARGARET
HOLMSTEAD	RYAN	EUGENE
HOLT	ROBYN	B.
HOLTBY	CAITLIN	ELIZABETH
HONG	KENNETH	P.
HOUDE	GILLES	
HOULDING	MYRA	SUSAN
HOWARTH	MAXINE	
HSU	LITA	CHIA-FANG
HUANG	CHIN-YUN	
HUANG	HAO	HUAI
HUANG	KEVIN	
HUANG	KRISTOPHER	
HUANG	MINGSHUN	
HUBBARD	MICHAEL	ANTHONY
HUBBARD	STEVEN	KIMBQALL
HUI	HAILONG	
HUISMAN	PIETER	CORNELIS DIRK
HUMBERT-DROZ	ALEX	ALOIS
HUMBERT-DROZ	PASCAL	ANDRE
HUSSON	JESSICA	HAYLEY
HUTCHINSON	SARAH	JANE
HUXTER	DOUGLAS	JOHN
HWANG	SUNG	JIN
HYDER	STEPHANIE	GAYLE
INDERMUHLE	JANN	CHRISTOPHER
ISDELL-CARPENTER	KATHERINE	
ISHIDA	HIROKI	
ITO	SAE	
JACOB	SUSAN	BUCHANAN
JACOBSON	LEE	GARY
JAFFRIN	MANUEL	LAURENT
JANICIJEVIC	IVAN	
JARVIS	NANCY	MARIE
JOHNSON	ANITA	LOUISE
JOHNSON-SMITH	THOMAS	GEOFFREY POMEROY
JONES	NEIL	
JUN	JESSICA	JOSHUA
Jutel	Annemaire	Goldstein
KADISHAY	ORI	
KAEMINGH	COLE	ADAM
KAEMINGH	COLE	ADAM
KAEMINGH	KATHY	MARIE
KAEMINGH	TANNER	JAMES
KAEMINGH	TEAGAN	DALEY
KAGAMI	SATOSHI	
KAHAN	RINA	
KALOUSTIAN	MICHEL	RAFFI
KALUS	WENZEL	SCOTT
KANIA	PATRICIA	RUTH
KAO	YUAN-CHUAN	
KAPLAN	DAVID	
KARLSSON	LARS	GEORG EMANUEL
KASSIN	NANCY	MARY

Last name	First name	Middle name/initials
KATES	ELISSA	BETH
KAUFMANN-WALTHER	VERONIKA	ELISABETH
KEELER	ROBERT	JOSEPH
KEHLSTADT	NORA	CAROLINE
KELLOGG	JAMES	EDWARD
KEMPNER	HANS	ROBERT
KENNEALLY	TIMOTHY	DOMINIC
KENNEDY	MARK	STEPHEN
KENYON	WILLIAM	THOMAS
KHALIL	FATMA	MAHMOUD
KHAN	ALI	BEGUM
KHO	LARRY	
KIM	DAVID	
KIM	GLORIA	SU-JUNG
KIM	JIYOUNG	
KIM	JOHN	MINSOO
KIM	YONG	WON
KIMBLE	JULIE	ANN
KING	ANN	MARIE
KING	BARBARA	LOIS
KINGSLEY-PALLANT	JOHN	RICHARD
KINGSMILL	VALERIE	ANNE
KIRCHHOFFER	TAREK-FABIAN	
KIRCZENOW	GREGORY	PETER
KITAO	SAGIRI	
KIYOKAWA	SHUNJI	SCOTT
KNOWLES	DOCHELLE	GIAN
KO	NAI-WEN	
KODALI	TANUJA	
KOFMAN	JEFFREY	CHARLES
KOH	NICHOLAS	WEE KIAT
KOHN	MIRIAM	YENTEL
KOLMAN	CLAIRE	SIMONE
KONDO	AKI	
KONING	MARIJE	
KOO	JOSHUA	VIN
KOSANSKY	RONA	
KOSTYK	BETHANY	ANN
KOVENSKY	HEATHER	BLAKE
KRAHENBUHL	STEPHANIE	JEAN
KREDITOR	ELLIOT	DANIEL
KREISCHER	DOREEN	MARY
KREMER-COLLINS	BETH	
KRETZ	DANIEL	JOHN
KU	ANDREW	
KUHN	SUZANNE	DORIS
KWEE	ANN	KERWEN
KWEK	KIMBERLY	MEI-RU
KWOK	ROSALINE	HIU-MUN
LAKE	TOVE	E.
LAM	JOHN	CHI-FUNG
LAM	PATRICK	CHI-HONG
LAMBA	JATINDER	PAL SINGH
LAMBE	SARAH	ANN
LANDY	TIMOTHY	JOHN
LANE	SARAH	VANIA
LANGFORD	HOLLY	PATRICIA
LANIGAN	PHILIP	LEONARD
LAROCQUE	FRANCINE	HELENE
LASKER	DAVID	RAYMOND
LATTIMER	LINDA	SUSAN
Lauderdale IV	John	Cobb
LAVERICK	PATRICIA	MARTHA
LAWRENCE	LETTY	
LAWSON	CARLTON	MICHAEL
LE ROUX	SOPHIE	ISOBEL
LEANEY	DANIEL	WILLIAM-JOSEPH
LEA-WARNER	SUSAN	MARY
LEBRETON	ALIX	SARA PAULINE
LECOURT	JEAN-PHILIPPE	ALAIN FRANCOIS
LEDOUX	JACQUELINE	
LEE	CHENG	CHANG
LEE	EARL	
LEE	HSING-MEI	ELSIE

Last name	First name	Middle name/initials
LEE	JILLIAN	BERESFORD
LEE	JONATHON	YON SEUNG
LEE	JUNE	
LEE	MYUNG	J.
LEE	THEODORE	FREDERICK
LEE	YOUNG	SOO
LEFEBVRE	LIONEL	
LeGrelle	Thomas	Santiago
LEIGH	ANGIE	LYNN
LEMLI	PATRICK	MELCHIOR
LESLAU	JAKE	ELLIOT
LI	IRENE	
LI	JUN	
LI	MAVIS	QIWEN
LIM	BRANDON	HUANG SHENG
LIM	JOSHUA	LI SHENG
LIN	ANTHONY	
LIN	HUI	QUAN
LIN	JANIS	TSAI-CHUN
LINDENMEYER	ALEXANDER	STEPHEN
LIPCHAK	SUSAN	LYNN
LIU	GORDON	GEN-ZHI
LLAGUNO	BERNARDO	
LOGAN	RICHARD	DOUGLAS
LOPEZ	STACY	ALISON
LORETTE	JOYCE	MARIE
LOVERING	GAIL	
LOVERING	ROBERT	
LOVEWELL	JAN	MARGARET
LU	WEIMING	
LUCKENSMEYER	DAVID	HAROLD
LUENGNARUEMITCHAI	PIPAT	
LUKOWIAK	KENNETH	DANIEL
LUTFALLA	DORA	YAZBEK SABBAGH
MA	KURTIS	SIN-KAI
MA	STEVEN	YAN QING
MACDONALD	RHONDA	ANNE
MACFARLANE	MARJORIE	REINHARDT
MACGREGOR	ESTHER	PEARL
MACKETT	ROBERT	GORDON
MACRANDER	ANDREAS	FRANCISCUS PIETER ANTHONIUS
MACROPULOS	ALKIS	JORGE
MADDALONI	DANIELE	DOMENICO
MADDALONI	DANIELE	DOMENICO
MAGID	BENJAMIN	HARRIS
MAK	KIT-MING	
MAKI	JEANNE	ELAINE
MALHOTRA	SHIVEN	
MALLICOAT	MARGOT	ANNE
MALONEY	ANA	CARINA
MANNING	DAVID	FRANKLIN
MANSON	JOHNNA	MARIE
MARCEAUX	OLIVIER	BAUGNIES DE PAUL DE SAINT
MARCHAND	FRANCOIS	
MARCO	MARIA	DEL PILAR
MARMER	DANIEL	KALMAN
MARNI	MADHAVI	
MAROIS	JEAN-FRANCOIS	PETER
MARSHALL	LINDA	ANN
MARTENS	MARTHA	CLARK EGER
MARTIN	HANA	MARIE
MARTY	SAMUEL	DAVID
MARVIN	DAVID	JAMES
MASI	VICTOR	SERAFINO
MASON	PENELOPE	ANNE
MASTORAKIS	HOLLIS	SUSAN
MATISKO	BARNARD	TAYLOR
MAUGER	ALYSHA	MICHELLE
MAURY	ERIC	JEAN
MAXWELL	LINDA	PRIMEAU
MAZREKU	MATTEO	GIUSEPPE JACK
MCCLELLAND	RICHARD	TERENCE
MCCORMICK	DOREEN	FOTI
McEvily-Bierett	Todd	Michael

Last name	First name	Middle name/initials
MCFADDEN	EDWARD	ANTHONY
MCGILVRAY	MARYSIA	MARIANNA NAKIELNA
MCGOUGH	SARAH	ELLEN
MCGUIGAN	MARY	L.
MCGUIGAN	MITCHELL	W.
MCHUTCHISON	JOSHUA	
MCKENZIE	CAROL	A.
MCKENZIE	WILLIAM	G.
MCLAREN	ROBERTA	DEANNE
MCMANUS	SHANNON	MARIE
MCNEICE	MOLLY	O.
MCNEILL	SANDRA	LYNN
MCPHERSON	JOHN	R.
MCTAVISH	MARIANNE	EMILY
MEALY	KENNETH	ROBERT
MEEHAN	JANE	ELLEN
MEHROTRA	PRAVEEN	
MEIER	ITHAI	BENJAMIN
MENKES	JACK	ANDREW
MENKES	JACK	ANDREW
MERZ	PETER	WALTER
Merz	Steven	Gustav
MESSMER	PETER	
MESSMER-KRATZSCH	ANTKE	CHRISTINE
MICHAUD	BRIGITTE	
MIN	SUSAN	
MINTO	ISAAC	YOUSAF-AHMAD
MITCHELL	JANICE	MARY
MITCHELL	JANICE	MARY
MITCHELL	KATHRYN	ANNE
MITCHELL	LAURA	JANE
MITCHELL	PETER	JAMES
MIURA	TAKAAKI	
MODIS	THEA	VICTORIA
MOERMAN	CLEMENTINE	GWENAILLE
MOLASKY	MICHAEL	SCOTT
MOLESKI	TIMOTHY	L.
MOLS	JESSICA	MARY
Mongillo	Michael	Anthony
MORE	SARAH	;EE
MORENO	EVA	GARCIA
MORGAN	CATHERINE	VANZANDT
MORGAN	CLARA	FRANCES
MORRISON	RICHARD	J.
MOUGANIE	SUZANNE	SHAHIDE
MULCAHY	NORA	
MULVEIN	HELEN	JANE
MURCH	STUART	DAVID
MURONE	VICTOR	BASTIEN
MURPHY	AMY	KATHLEEN
MURRAY	DAVID	STUART
NAERT	KAREN	ANNE
NAGASAWA	YURIA	
NAKAGAWA	AYA	MADELEINE
NAKAGAWA	TAKANORI	CHRISTOPHER
NAKAGAWARA	JUN	
NAKAJIMA	TETSUYA	
NAM	KYEONGHEE	
NASH	LORI	
NATHANI	SHEENA	DEEPAK
NATHWANI	NEHA	
NELSON	RIAN	WEI-JIAN
NEUHAUS	CORSIN	MARTIN
NEUMANN	DOV	
NEUMANN	JACOB	
NEUMANN	JOEL	
NEUMANN	MOSHE	
NEUMANN	RACHEL	HANNAH
NEUMANN	YEHUDA	ZEV
NEWTON	NICHOLAS	JOHN
NG	CARY	GONZALES
NG	KATHLEEN	WAI LING
NICHOLS	MARY-SUE	OLGA
NICHOLSON	FREDERICK	LORENCE

Last name	First name	Middle name/initials
NISHIWAKI	TOKIO	MARTIN
NORTON	ABIGAIL	MARY SPENCER
NOTARO	FRANK	
NUMATA	AKIRA	
NUMATA	KUNIKO	
O'CONNOR	BRADLEY	JOHN
O'CONNOR	JACK	O.
OGDEN	JASON	BARTLEY
OHSBERG	ROBERT	CHARLES
OJJEH	SORAYA	JOSEPHINE
OLSON	CHERYL	LEE
OREN	SHEERY	
OSTERTAG	NICOLA	C.
OSTRO	DAVID	JONATHON
OUYOUB	HAMID	
OZUPEK	CANAN	
OZUPEK	GOKMEN	
PAI	STEVEN	YOUNG-YAW
PALK	WARREN	
PALMER	ADELE	CRISTINA SOPHIA
PAN	FENG	
PANG	STEVEN	
PANG	SU	JEN CHEN
PAPERNICK	SYLVIA	RUTH
PAPIN	ALEXANDRE	LOUIS MATTHIEU
PAPPAS	GRETA	
PARANT	SYLVIE	
PARMANTIER	LOUISE	ANNE
PATMON	JEFFREY	ALLEN
PAUL	JANE	YUKIKO
PEACOCK	DIANE	KAY
PEARCE	CATHERINE	ANNE
PEARSON	DONALD	JAMES
PEARSON	HONOUR	HEPBURN
PEARSON	SUZANNA	NANCY
PEDERSEN	MARK	EDWARD
PEIRIS	DARREL	SAHAN
PENG	JUN-XIANG	
PERKINS	MARK	ALLAN
PERROUD	LOUISE	MARGUERITE
PERRUCCIO	MATTHEW	DANTE
PFEIFER	ISRAEL	
PHILIPS	EMILY	BENESTAD TEETER
PHILLIPS	HEATHER	MURIEL
PIETSCH	KARINA	IRENE
PIGUET	GABRIEL	
PINTO	CLAUDIA	
PIZARRO	CLAUDIA	ELISA
Pliska	Benjamin	Tobias
PLOTSKE	MICHAEL	LONJA
POLLACK-RUFFINER	GWEN	PHYLLIS
PORUS	LYNN	DIANE
POSTIF	SOPHIE	J.
POTT	HENDRIKUS	
POWELL	JAMES	ALAN
POWELL	LUKE	JENSEN
POWELL	NELS	JENSEN
PREVOST	KYLE	JOHN
PRICE	KEITH	DOUGLAS
PRICKETT	BARBARA	M.
PRYCE	NICOLA	KATHLEEN
PUE	CHRISTOPHER	E.
PYUN	SA-KEUN	
QASEM	ROKEYEA	FUAD
QUIBAN	CHARLEMAGNE	R.
QUIRK	KAITLIN	ANN
RADATZKE	ROSS	CLAYTON
RANK	DAVID	JAMES MICHAEL
RANK	JULIA	HOPE FRANCES
RAUHUT	CHRISTIAN	
RAY	JAMES	ROBERT
RAYNER	GEORGINA	ISABEL
REAVES	BRIAN	MCCAIN
REDD	ANNA	M.

Last name	First name	Middle name/initials
REDLINGER-LIBOLT	CRISTINA	
REEVES	CATHERINE	LEE
REGOUT	BRIGITTE	LOUISE
REHNER	ALAN	
REMPEL	CATHERINE	EDITH
RESLOW	NATASJA	
RESURRECCION	ZENAIDA	O.
REYES	REGINA	ONGSIAKO
REYNAUD	KRISTINE	ELIZABETH
REYNOLDS	KAREN	HAFSTEN
RIESE	NICHOLE	MARGARET MARIE
ROBINSON	ALEXANDER	MCLEOD
ROBINSON	LAUREN	RACHELLE
ROBINSON	NADINE	
ROCKEL	DANIELLE	MARIE
ROGERS	ELEANOR	COLTON
ROGERS	JANE	
ROGERS	SUSAN	LESLIE
ROJAS	ROMEO	ANDRES
RONNING	HARMON	NELSON
ROSE	DANIEL	LINCOLN CONELY
ROSENBLATT	ERIC	
ROSENFELD	TAMAR	
ROSIN	HAZEL	MAUREEN
ROSIN	HAZEL	MAUREEN
ROULEAU	CLAUDE	GUY
ROWNTREE	NEIL	ANDREW
ROZEK	JANE	CATHERINE
RUCCIA	HOLLY	RACHELLE
RUDISILL	JENNIFER	ROBYN
RUIZ	EMILY	ANNA CATAPANO
RUSHTON	JEREMY	STOUT
RYAN	DAVID	ANDREW
SABBAGH	LEDA	YAZBEK
SABRI	KARMEN	
SAFFELL	BRANDON	JIN
SAJJAMANOCHAI	CHANON	
SALCHERT	WADE	RODNEY
SALDARRIAGA	ROXANNA	LILIANA
SALL	CONNIE	RAE
SALMAN	TASHA	MARIA JENNIFER
SAMAWI	SABAH	
SAMUELS	THEIPHILUS	L.
SANDBERG	ANNIE	
SANDERSON	SOPHIE	BRIGITTE
SANDLER	MICHAEL	STEPHEN
SASANOW	GETHEN	JAN
SATO	JUNYA	
SAYMEH	DIMA	
SBROCCHI	ANNE	MARIE
SCHAEFER	JOERG	
SCHAEPPI	ANDREA	BARBARA
SCHENCK	KATHERINE	PRUITT
SCHENK	STEPHANIE	NOELLE
SCHIEBEL	RUDI	ANDREW
SCHINCARIOL	DIANE	ELIZABETH
SCHMIDT	AMY	ELIZABETH
SCHNIDER	DANIEL	
SCHNORF	CELINE	
Schnorf	Maya	Larisa
SCHNUR	DAVID	
SCHOFIELD	SALLY	ANN
SCHUSTER	SARAH	LYNN
SCHUTTEVAER-JONES	CATHERINE	JEAN DIERKENS
SCHWIEGER	FLORIAN	
SCOTT	MICHELLE	
SCULLEN	KAREN	V.
SELL	MADELAINE	NELLY
SHAFIQUE	FAREHA	
SHAFIQUE	FAREHA	
SHAFIQULLAH	WALEED	
SHAH	KALYANI	MOHAN
SHAH	YOMESH	DINESH
SHANK	EMILY	CLAIRE

Last name	First name	Middle name/initials
SHARAPOV	GERMAN	GEORGIEVICH
SHARIR	SHARON	
SHARPLES	ANDREW	WILLIAM
SHERMAN	LAURENCE	CORNISH
SHERRARD	JULIAN	
SHI	DANZHU	
SHIFMAN	AMANDA	COLE
SHIFMAN	KATIE	COLE
SHIM	YO	HAN
SHIMIZU	SHUNTARO	JAMES
SHNITZER	TIMNA	
SHOCTOR	DEBORAH	ANNE
SHOUSE	RONDI	SUE
SHUKEN	CYNTHIA	RUTH
SHYU	RUEY	JEN
SIAH	KENDRA	JIA QI
SIBRAVA	IVANA	
SIEBENMANN	ELIZABETH	CLARE
SIEBER	KATRIN	LEONORA
SILBERMAN	MICHAEL	BOLEK
SILVERBERG	ERIC	LASER
SIMPSON	BARBARA	JEAN
SIMPSON	GORDON	JAMES MONCRIEFF
SIMS	JOHN	R.
SINCLAIR	HARLEY	DAVID
SIU	LYDIA	YOLANDA
SKEICH	MEGAN	EMILY
SKEICH	SAMANTHA	SHEA
SLAUGHTER	VIRGINIA	PAYNE
SMITH	MORGAN	ROBINSON
SMITH	ROBERTA	ANNE
SMITH	THERESA	LYNN
SNOW	RUSSELL	WAYNE
SNYDER	CRYSTAL	LYNN
SNYDER	DELORES	ANN
SNYDER	RICHARD	
SOARES	AMY	JEAN
SOLOMON	GINA	
SOMERS	OLIVER	
SOMERVILLE	TU'IFUA	ANN
SOMMERFELD	ELMA	RUTH
SPENCER	SARAH	JANE
SPERI	LODOVICA	GAIA
SPOONER	JULIE	ELIZABETH
SPRATLEY	LYNDA	ANN
STARK	SARAH	BERKELEY
STAUB	JEREMY	WILLIAM LAURENT
STAVRIOTIS	MICHIKO	
STCHEDROFF	MARC	JUSTIN
STEGER	MICHAEL	PETER MARIA
STEPHENS	DEBORAH	MEIKLEJOHN
STEVENS	PATRICIA	JOANN
STEVENSON	MARY	ELLEN
STIEFEL	CHRISTIAN	JOHANNES
STOCKMAN II	WILLIAM	TORRENCE
ST-ONGE	ANNIE	MARIE
ST-ONGE	MARCEL	
STOWE	MEGAN	JOY
STRECANSKY	ROBERT	
STROMGREN	JOHN	ERIC
STRONG	RICHARD	GEORGE
SUH	BYUNG	KYO
SULLIVAN	DANIEL	EUGENE
SUZUKI	MAKOTO	
SUZUKI	YUMARO	
SWANSON	MICHELE	LOUISE
SYKES	MAXWELL	MARTIN
SZABO	MARIETTE	LUCILLE
TADGELL	ROBERTA	DEE
TAKEI	GEN	LEON
TAN	FRANCINE	CHIU-LAN
TAN	NATHANAEL	CHIH ENG
TAN	PENG	HOCK PHILIP
TAN	TECK	JUN LEON

Last name	First name	Middle name/initials
TAWFIK	SALAH	SAMEH
TAYLOR	ANNE	MARIE
TESCHE	JANE	MARIE
TEZHIK	GREGORY	KONSTANTIN
THARALSON	MOLLY	LYNNE
THEE	DAVID	SHLOMO
THENAYAN	YAROB	ABDULLAH
THIEL	GUNTER	LUDWIG
THIM	PIERRE	JACQUES VAN SCHERPENZEEL
THIRLWALL	JENNIFER	MAE
THOMAS	KAI	
THOMAS	KAI	
THOMPSON	ISABEL	FOLSOM
TILG	LAURA	
TIPTON	BARBARA	ANNE
TISCHLER	RICHARD	THOMAS
TJAHJANA	CHRISTINA	BUDY
TO-HUI	BELLA	SUET-LING
TOMINAGA	YUKI	EDWARD
TOMKINS	DOMINIC	CHARLES
TOOHEY-WIESE	ELIZABETH	LORRAINE
TORABI	SHAHIN	
TORNKVIST	ELIZABETH	LOUISE
TOUQAN	LENA	
TOZER	NADINE	JANET
TRACHSEL	ROSMARIE	HANNA
TRACHTENBERG	LARRY	STEVEN
TRAINOR	ROBERT	JAMES
TREACY	SEAN	PATRICK
TREACY	THOMAS	EDWARD
TRIMBLE	DALE	ELLIS
TRONEL	CAROLINE	MARIE
TROTTIER	DORIS	JO
TSAI	CHUAN	CHUNG
TSENG	NICHOLAS	HU
TSOI	MAN	
TUCKER	JOHANNA	ROSE
TUCKER	JOHANNA	ROSE
TUNG	TAIWAI	DAVID
TUNSTALL	CAROLE	
TYLER	ALICE	H.
TYLER	FRANCIS	S.
UEFFENGER	FRIEDRICH	
UEFFINGER	MONIKA	E.
UGARTE	MIKELE	MIREN
UHDE	KATHRYN	MAST
UMBLE	LUKE	
UNSWORTH	EDWIN	PHILIP
UNTERHOR	ANNEMARIA	
UOSHIMA	KAZUKI	ALEXANDER
VALENTINE	MARK	LAWRENCE
VALLARINO	ROBERTO	RAMON
VALOIS	JOANNE	
VAN ALPHEN	JOHN	CHRISTOPHER
VAN DE LOO	MARIELLE	WILHELMINA MARIA
VAN DER LAAN	FRITS	HENRY
VAN DER LAAN	OTTO	DONALD
VAN DER VELDE	NAOMI	LEE
VAN DER WAL	ASTRID	KARIN
VAN DONGEN	MARIA	
VAN LIL	EDRIS	ERMA
VAN RUYVEN	RUTGER	LODEWIJK JOHAN
VAN VEEN	ROELOF	GIJSBERT
VASSALINI	MONICA	
VASWANI	PREETI	
VAUDREMER	ANNE	SHIPPEN
VENANZI	THOMAS	JOHN
VENZAL	BRIGITTE	FRANCOISE MICHAUD
VERDEAUX	JEAN-JACQUES	
VERHUE	BRUNO	JOHAN HENDRIK
VERWEY	ROBERT	
VEYRE	JULIEN	FERNAND
VILLAGELIU	ALBERTO	ALFONSO
VILLARREAL	CHRISTOPHER	C.

Last name	First name	Middle name/initials
VIS	GLADYS	MAE
VITZTHUM	ROZANNE	CHARBONNEAU
VOGEL	THERESA	MARIA
VON LIERES UND WILKAU	VALBORG	
VON MANDACH	CONRAD	JEAN
VON SCHUCKMANN	MARIA	ALEXANDRA
VRIES	CHARLOTTE	LOUISE
WADE	CLAIRE	HARPER
WAGNER	HENRY	REMY
WAGNER	TRUDY	FRIEDA
WAKKIE	JULIE	CORINNE ELISABETH
WALKER	BRANDON	NICKOLUS
WALLET	SUSAN	ELIZABETH
WALTMAN	CAROLINA	MARIA
WANG	ANDREW	XIAO
WANG	QUN	
WARMINGTON	HARRY	PARK
WARNER	HESTER	ANN
WARNETT	SANDRA	
WASHBURN	THOMAS	LA ROR
WASTLING	JONATHON	PAUL
WATERREUS	ANNE	MARIE
WATTERS	GREGOR	ANTON RANDALL HARTL
WEBER	MARA	J.
WECHSLER	JOSEPH	B.
WEE	STEVEN	RYAN CHAN
WEEDON	CYNTHIA	ANN
WEIL	JONATHAN	JOEL
WEINROTH	REGINA	WECHSLER
WEISS	NICKI	LYNN
WEISS	NICKI	LYNN
WEST-CHOW	HALEY	
WETZEL	CHRISTOPHER	ANTHONY
WEXLER	ROBERTA	LEE
WHEATLEY	KIM	THOMAS BRAUN
WHITE	JOAN	MARIE
WICKE	JOSEF	YUUICHI
WIJNHOLDS	MARIETTE	BINA DE BEAUFORT
WILDE	DARREN	DALE
WILKE	JOEL	DAVID
WILLI	MATTHIAS	JOHANNES
WILLIAMS	ANDREA	LOUISE
WILLIAMS	ANTON	JOHN
WILLIAMS	CHRISTINE	A.
WILLIAMS	CLAIRE	ALISON
WILLMOT	SUSAN	ELAINE
WINDSOR-CLIVE	UMAWORN	IDRIS
WISHART	CHARLES	GEORGE
WITHERS	LYNN	
WITTENMARK	KARL	ERIK
WONG	CHIN	SHIONG
WONG	HEI-MAN	FRANCES
WONG	MICHELLE	TIFFANY
WONG	SOPHIA	IRENE
WOOD	MARY	ANNE
WOODWARD	GILLIAN	VANESSA
WOOTEN	DAVID	MICHAEL
WRIGHT	RUTH	MARIE
WU	ALICE	HSIN JOU
WU	EMILY	CHUN-LING
WU	JUSTIN	TANG
WUENSCHE	ALEXANDER	JULIAN
WUERSCHING	BERND	WERNER
WYNN	MATTHEW	PAUL
XIONG	YUJIE	
YANG	TERRY	TAI YU
YU	CHRISTINE	
YU	HSIAO	PIN
YUASA	HISAO	
YUN	RUMI	CHLOE
YUNG	NGAN	HAU
ZAHID	EMAN	ALI
ZAPATA	MARIA	DEL CARMEN
ZARAWANI	SAIF	ABDUL RAHIM

Last name	First name	Middle name/initials
ZAROVSKY	IVAN	VALERY
ZBIKOWSKI	KEVIN	ALEXANDER
ZEEV	ISRAEL	
ZHENG	WEIKANG	
ZIADEH	NAYLA	BASSEM
ZIMMERMAN	SHULAMITH	RAISELE
ZONNEVELD	GERRIT	JAN
ZOU	JISHENG	
ZUIDHOF	GRANT	ALAN
ZWIERS	MARJAN	

Dated: July 24, 2018.

Diane Costello,

Manager Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2018–16475 Filed 7–31–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Bureau of Engraving and Printing (BEP), Department of the Treasury.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department''), Bureau of Engraving and Printing (''BEP'') proposes to modify an existing system of records titled, ''Department of the Treasury/Bureau of Engraving and Printing-.048—Electronic Police Operations Command Reporting System (EPOCRS)'' that will now be titled ''Department of the Treasury, Bureau of Engraving and Printing (BEP)-.048—Police Operations Command Reporting System (POCRS).''. This system of records contains records related to investigations of criminal and/or administrative incidents, traffic accidents, and/or general concerns and complaints regarding BEP property and persons for which the BEP Police maintains jurisdiction.

DATES: Submit comments on or before August 31, 2018. This modified system and the routine uses will be applicable August 31, 2018 unless BEP receives comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Comments should be sent to Leslie J. Rivera Pagán, Attorney/Advisor-Privacy Act Officer, Office of the Chief Counsel, U.S. Department of the Treasury, Bureau of Engraving and Printing, Room 419A, 14th & C Streets SW, Washington, DC 20228, Attention: Revisions to SORN Treasury/BEP .048–EPOCRS, or fax to (202) 874–2951, or email to *Leslie.Rivera-Pagan@bep.gov.* For faxes and emails, please place ''Revisions to SORN Treasury/BEP .048–EPOCRS'' in the subject line. You may also submit comments to the Federal eRulemaking Portal electronically at *http://www.regulations.gov.* Comments will be made available for public inspection upon written request. The BEP will make such comments available for public inspection and copying at the above listed location, on official business days between 9:00 a.m. and 5:00 p.m. eastern time. Persons wishing to review the comments must request an appointment by telephoning (202) 874–2500. All comments received, including attachments and other supporting documents, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For Privacy Act questions please contact: Leslie J. Rivera Pagán, Attorney/Advisor-Privacy Act Officer at (202) 874–2500 or *Leslie.Rivera-Pagan@bep.gov.* For general privacy matters please contact: Anthony Johnson at (202) 874–2258 or *Privacy@bep.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury (''Treasury'' or the ''Department''), Bureau of Engraving and Printing (''BEP'') proposes to modify an existing system of records titled, ''Department of the Treasury, Bureau of Engraving and Printing (BEP) .048—Electronic Police Operations Command Reporting System (EPOCRS).''

The mission of the BEP is to develop and produce United States currency notes, trusted worldwide. BEP prints billions of U.S. currency notes—referred to as Federal Reserve notes—each year for delivery to the Federal Reserve System. Due to the sensitive nature of currency production operations, the BEP is generally closed to the public. Limited areas of the BEP, however, are accessible for public tours during certain authorized dates and times. Any individual entering, exiting, or on the BEP's property is subject to the rules of conduct as prescribed within the regulations, and violations may result in criminal prosecution. The BEP has a high degree of security due to producing Federal Reserve notes and individuals are placed on notice that they are subject to search and inspection of their person, personal items and property while entering, exiting, and on the property.

The BEP's Office of Security, Police Operations Division at the District of Columbia Facility (''DCF'') and the Office of Manufacturing Support, Security Division, Police Services Branch at the Western Currency Facility (''WCF'') are collectively known as the BEP Police. The BEP Police use the Police Operations Command Reporting System as a robust management and reporting system for investigations of criminal and/or administrative incidents, traffic accidents, and/or general concerns and complaints regarding BEP property and persons for which the BEP Police shares jurisdiction through a cooperative agreement, memorandum of understanding, or other arrangements BEP has with other federal, state, or local agencies or law enforcement offices or operations. The system increases efficiency and provides accountability by streamlining procedures and automating some paper forms that may contain personally identifiable information (PII) of individuals including members of the public visiting BEP at DCF and WCF.

Under the existing system of records, BEP Police may collect limited PII associated with investigations pertaining to BEP property and persons under BEP's Police jurisdiction. The BEP Police generates and manages its records primarily in paper form. The BEP Police is initiating comprehensive administrative improvements through an automated data system that facilitates

the transition from paper records to an electronic system. This system is designed to create an automated web-based repository for forms, logs, and records associated with records generated and managed by the BEP Police. In addition, the system allows authorized BEP Police to: (1) Query information; (2) prepare management reports; (3) retrieve the status of a particular investigation; (4) electronically process PII, which may include Social Security numbers (SSNs); and (5) collect PII in automated forms such as: (1) Voluntary statements from individuals or witnesses, (2) evidence and/or property in BEP custody, (3) traffic accident reports, (4) offense/incident reports, (5) consent for search of BEP employees or contractors, and (6) security violations by BEP employees or contractors.

The changes to the system or records include: (1) Renaming all headings and the system title to ''Department of the Treasury, Bureau of Engraving and Printing (BEP) .048—Police Operations Command Reporting System''; (2) clarifying the categories of individuals covered by the system; (3) adding categories of records maintained in the system, including Social Security numbers (SSNs), if provided voluntarily; (4) clarifying agency's existing applicable authorities for maintenance of the system; (5) clarifying the purpose of the system; (6) clarifying the applicable records retention schedule citation; (7) adding contractors and federal, state, local, and foreign agencies as a record source category; (8) adding routine uses to share information with other (a) federal agencies or federal entities as required by OMB Memorandum 17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' dated January 3, 2017, to assist BEP in responding to a suspected or confirmed breach or prevent, minimize, or remedy the risk of harm to the requesters, BEP, the Federal Government, or national security, and (b) federal, state, local, or other public authority agency which has requested information relevant or necessary to the requesting authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (9) expanding the policies and practices for retrieval of records to include retrieval by Social Security number (SSN), if provided voluntarily to the BEP; and (10) eliminating the records management inspections routine uses already permitted under the Privacy Act of 1974.

Other changes throughout the document are editorial in nature and consist primarily of correction to citations and updates to point of contact and address.

BEP has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

For the reasons set forth in the preamble, BEP proposes to modify its system of records entitled ''Department of the Treasury, Bureau of Engraving and Printing (BEP) -.048—Electronic Police Operations Command Reporting System (EPOCRS)'' as follows:

Dated: July 26, 2018.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER

Department of the Treasury, Bureau of Engraving and Printing (BEP) -.048—Police Operations Command Reporting System of Records (POCRS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the Office of Security, Police Operations Division, Bureau of Engraving and Printing, District of Columbia Facility, 14th & C Streets SW, Washington, DC 20228, and the Office of Manufacturing Support, Security Division, Police Services Branch, Bureau of Engraving and Printing, Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131.

SYSTEM MANAGER(S):

Chief, Office of Security, Police Operations Division, Bureau of Engraving and Printing, District of Columbia Facility, 14th & C Streets SW, Washington, DC 20228, 1–877–874–4114, (202) 874–4000, and Security Division Manager, Office of Manufacturing Support, Security Division, Police Services Branch Western Currency Facility, 9000 Blue Mound Road, Fort Worth, TX 76131, 1–866–865–1194, (817) 231–4000.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321, 5141; 40 U.S.C. 1315; Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons, 8 FR 16095 (November 22, 1943) as amended by Executive Order 13478, 73 FR 70239 (November 18, 2008); 31 CFR part 605; and Treasury Order 101–33, Delegation of Authority to the Directors, Bureau of Engraving and Printing and United States Mint, to Appoint Special Police Officers, dated March 30, 2010, reaffirmed May 1, 2017.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to establish a database for records regarding investigations of criminal and/or administrative incidents, traffic accidents, and/or general concerns and complaints regarding BEP property and persons under BEP's Police jurisdiction.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, and members of the public, such as service company employees and visitors involved or that have provided information in a criminal and/or administrative incident(s), traffic accident(s), and/or general concern(s) and complaint(s) regarding BEP property and persons under BEP's Police jurisdiction.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Identification and Contact Information for Involved Individuals:

- Type of Person (Victim, Suspect, Witness, or Representative);
- Full Name;
- Date of Birth;
- Place of Birth;
- Age;
- Social Security number (SSN) (provided voluntarily);
- Gender;
- Physical Description (Race, Height, Weight, Hair Color, Eye Color, Scars, Marks and Tattoos and location);
- Description of clothing worn (*i.e.,* hat, coat, shirt, pants, skirt, shoes, glasses etc.);
- Address (Number, Street, Apartment Number, City, State, Country, and Zip Code);
- Telephone number (Home, Business);
- Injured (Yes or No);
- Passport Information (Number, Country of Issue, Expiration Date); and
- BEP Security Access Control System (SACS) Badge Number.

2. Incident Information:

- Type of Report;
- Report Number/Case Number;
- Narrative Description of Incident;
- Date and Time of Call;
- Incident Type;
- Incident Sub-Type;
- Location (Name, Address, Building, Room, Floor, Other);
- Jurisdiction;
- Dispatched Officer's Name;

- Dispatch Date/Time;
- Arrival Date/Time;
- Date/Time Cleared;
- Date and Time Occurred;
- Day of Week Occurred;
- Date and Time Reported;
- Day of Week Reported;
- Disposition Condition;
- Email Recipient (BEP police);
- Email Address (BEP police);
- Active Directory Group;
- Comments;
- Mode of information; and
- National Crime Information Center (NCIC)/Washington Area Law Enforcement System (WALES) Check.

3. Suspect Status Information:

- Suspect Status/Disposition: Not Identified; Government Employee; Government Contractor; Member of the Public; Arrested/Not Arrested; Citation number issued; Employee/Contract Security Violation number issued; and Released;
- Narrative;
- Assigned By;
- Assigned Date;
- Comments;
- Reporting Official's Name;
- Reporting Official's SACS Badge Number;
- Reporting Official's Signature (Paper Form only);
- Date of Signature;
- Supervisor's Name;
- Supervisor's Signature (Paper form only);
- Date of Signature;
- Recommendations (Open Investigation, Process Citation, Issue BEP Security Violation, No Further Action);
- Investigation Opened (Yes/No);
- Case Number;
- Referred to (Text Field);
- Closed (Text Field);
- Suspect Developed/Arrested (Yes/No);
- Property Recovered (Yes/No);
- Court Date (Yes/No) Text Field; and
- Entered NCIC (Yes/No, N/A).

4. Traffic Accident/Incident Report Information:

A. Vehicle Driver Information:

- Full Name of Driver;
- Home Address (City, State, Country, Zip Code);
- Home Telephone number;
- Driver's License number, Permit Type (Operator/Chauffer/Commercial Driver's License (CDL) and Issuing State;
- Expiration Date;
- Status (Active, Revoked, Suspended, No Operator's License on File);
- Name, Gender, Age, and Contact Information for any Vehicle Passengers or Pedestrians Impacted by the Accident/Incident;
- Name and Contact Information for any Witnesses (Voluntary);
- Outcome of Accident (Injuries, Death, Pedestrian Impact;
- Violation charged (if applicable); and
- Comment Field for Final Disposition.

B. Information about Vehicle, Owner, Description, Licensing, and Insurance:

- Owner's Full Name;
- Owner's Address (City, State, Country, Zip Code);
- Vehicle Description (Make, Model, Year, Color);
- Registration (Owner's Driver's License Number, Year, State, Vehicle Tag number, and Vehicle Identification number (VIN));
- Insurance Information (Name, Address, and Telephone Number of Insurance Carrier);
- Insurance Policy Number; and
- Expiration Date of Insurance Policy.

C. Information about the Accident and the Investigating Officer(s) Involved:

- Organization of the Investigating Officer(s);
- Officer(s) badge number;
- Case number;
- Number of vehicles involved;
- Location of accident (City, County, State);
- Time and Date of Accident;
- Accident Type, Degree, and Cause (Hit and Run, etc.);
- Physical Description of Driving/Weather Conditions;
- Post-Accident Vehicle Description (Damage location(s));
- Disposition of the Vehicle and Current Location; and
- Signatures of Investigating/Approving Officer(s).

5. Information about Property and/or Evidence:

- Description of Item;
- Item number;
- Brand Name;
- Model;
- Serial Number;
- Ownership (Government or Personal);
- Quantity;
- Color;
- Estimated Value;
- Property was (Secured Unsecured);
- Status of Property (Missing, Recovered, or Partially Recovered);
- Evidence Seized (Yes/No);
- Evidence Tag number;
- Type of Evidence Seized;
- Evidence Storage Location;
- Case Number;
- Other Agency Case Number;
- Receiving Component;
- Address of Component;
- Location where property or evidence was obtained/seized;
- Person Evidence Received From (Full Name and Title) and whether they are the owner;
- Reason Obtained;
- Date/Time Obtained;
- Quantity;
- Full Description Text;
- Purpose for Change of Custody (if applicable);
- Comments;
- Reporting Official Comments;
- Final Disposition: Released to Owner/Other; Destroyed; Other; Name of Disposition Authority; and Date of Signature; and
- Name and Signature of Destroyer of Evidence and any Witness; Office/Agency of Witness.

6. Information about Other Agency Involvement:

- Name of Other Involved Agencies;
- Name, Rank or Grade of Other Agency Involved Individual (if applicable);
- Notified Time; and
- Arrived Time.

7. Information Obtained from Voluntary Statements:

- Full Name;
- Organization/Agency/Section/Office;
- Social Security number (SSN) (Voluntary);
- Home and Business Address;
- Home and Business Telephone number;
- Gender;
- Age;
- Race;
- BEP Security Access Card (SAC) number;
- Voluntary Statement;
- Signature;
- Name, Title, Business Telephone number, and Organization of Individual taking the Statement;
- Report number; and
- Date and Time Voluntary Statement Obtained.

In addition to the data obtained above, the BEP Police are able to provide additional comments via a free text field to expound on any listed data element.

RECORD SOURCE CATEGORIES:

Records are obtained from (1) employees and contractors, (2) individuals involved in a criminal and/or administrative incident, traffic accident, or general complaint under BEP's Police jurisdiction, (3) authorized officials or legal representatives of such individuals, and (4) federal, state, local, or foreign agencies that provide information or access to investigatory databases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act, 5 U.S.C. 552a(b), records or portions thereof maintained in this system may be disclosed outside Treasury/BEP as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To appropriate federal, state, local, or foreign public authority agencies responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil, administrative, or criminal law, or regulation;

(2) To federal, state, local, or other public authority agency which has requested information relevant or necessary to the requesting authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) To a court, adjudicative body, or other administrative body before which BEP is authorized to appear when (a) the agency, (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the U.S. Department of Justice (''DOJ'') or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) To the U. S. Department of Justice (''DOJ'') for the purpose of representing or providing legal advice to the BEP in a proceeding before a court, adjudicative body, or other administrative body before which the BEP is authorized to appear, where the BEP deems DOJ's use of such information relevant and necessary to the litigation, and when such proceeding involves:

(a) The BEP or any component of it;

(b) Any employee of the BEP in his or her official capacity;

(c) Any employee of the BEP in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The Government of the United States, when the BEP determines that litigation is likely to affect the BEP and the use of such records by the DOJ is deemed by the DOJ to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected;

(6) To appropriate agencies, entities, and persons when (1) the Department and/or BEP suspects or has confirmed that there has been a breach of the system of records; (2) the Department and/or BEP has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department and/or BEP (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department and/or BEP efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

(7) To another federal agency or federal entity, when the Department and/or BEP determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name of the individual(s) involved in the incident, date(s) of the incident, Social Security number (SSN) if provided voluntarily, and by system generated report numbers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are managed in accordance with National Archives and Records Administration approved BEP Records Retention Schedule N1–318–04–8 Security Systems and Services.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is limited to BEP personnel approved by the Office of Security, Police Operations Division at the District of Columbia Facility (''DCF'') and the Office of Manufacturing Support, Security Division, Police Services Branch at the Western Currency Facility (''WCF''). There are both logical and physical controls in place to protect access to the data. Records are maintained in locked file cabinets. Only authorized BEP personnel have access to the area that houses the file cabinets. Rooms are locked when not manned by cleared personnel.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains their information should address written inquiries in accordance with 31 CFR part 1 to the Disclosure Officer, Bureau of Engraving and Printing, Office of the Chief Counsel—FOIA and Transparency Services, 14th & C Streets SW, Room 419–A, Washington, DC 20228.

CONTESTING RECORD PROCEDURES:

See ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on April 16, 2013 (78 FR 22619) as the Department of the Treasury, Bureau of Engraving and Printing (BEP) .048—Electronic Police Operations Command Reporting System.

[FR Doc. 2018–16439 Filed 7–31–18; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the Presidential Silver Medals Program

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the Presidential Silver Medals Program as follows:

Product	Retail price
George Washington Presidential Silver Medal	$39.95
John Adams Presidential Silver Medal	39.95
Remaining Presidential Silver Medals	39.95

FOR FURTHER INFORMATION CONTACT: Veronica Anderson, Program Manager for Numismatic and Bullion; United States Mint; 801 9th Street NW; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111(a)(2)

Dated: July 27, 2018.

David J. Ryder,

Director, United States Mint.

[FR Doc. 2018–16441 Filed 7–31–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Geriatrics and Gerontology Advisory Committee

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) Office of Geriatrics and Extended Care is seeking nominations of qualified candidates to be considered for appointment as a member of the Geriatrics and Gerontology Advisory Committee (''Committee''). The Committee advises VA on all matters pertaining to geriatrics and gerontology.

DATES: Nominations of qualified candidates are being sought to fill two vacancies on the Committee. Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on September 30, 2018.

ADDRESSES: All nominations should be mailed to Ms. Alejandra Paulovich, Designated Federal Officer (DFO), Geriatrics and Gerontology Advisory Committee (GGAC), Department of Veterans Affairs, 810 Vermont Ave. NW, (10NC4), Washington, DC 20420 or emailed to *Alejandra.Paulovich@va.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Alejandra Paulovich, DFO, GGAC, by phone at (202) 461–6016 or by email at *Alejandra.Paulovich@va.gov.* A copy of the Committee charter and list of the current membership can also be obtained by contacting Ms. Paulovich.

SUPPLEMENTARY INFORMATION: The Committee is authorized by statute, title 38 U.S.C § 7315, to advise on all matters pertaining to geriatrics and gerontology and to (1) assess (through an evaluation process that includes a site visit conducted no later than 3 years after its establishment) each new VA Geriatric Research, Education, and Clinical Center on its ability to achieve its established mission; (2) assess the capability of VA to provide high-quality geriatric, extended, and other health care services to eligible Veterans, taking into consideration the likely demand for such services from such Veterans; (3) assess the current and projected needs of eligible Veterans for geriatric, extended care, and other health care services from VA and its activities and plans designed to meet such needs; and (4) perform such additional functions as the Secretary or Under Secretary for Health may direct. The Committee provides, not later than December 1 of each year, an annual report summarizing its activities for the preceding year.

Membership Criteria and Qualifications: The Committee is comprised of not more than 12 non-Federal employee members appointed for a 4-year term. The Committee's membership includes individuals who have demonstrated interest and expertise in research, education, and clinical activities relating to aging.

The expertise sought includes, but is not limited to, the following:

a. familiarity or experience with VA and/or non-VA health systems;

b. familiarity or experience with academic geriatric and gerontology programs;

c. familiarity or experience with palliative medicine, home and community-based care, and nursing home care;

d. familiarity or experience with grant-funded academic research;

e. familiarity or experience with clinical and health policies concerning the elderly;

f. familiarity or experience with the partnerships between VA academic programs;

g. familiarity with the history of geriatrics in the VA and in the U.S.;

h. familiarity or experience with VA's Geriatric Research, Education, and Clinical Centers.

Membership Requirements: The Committee holds at least one face-to-face meeting in Washington DC and conducts 4–5 site visits a year. The ideal candidate will be willing to travel 3–5 times per year to help the Committee fulfill its objectives. In accordance with Federal Travel Regulations, VA will cover travel expenses—to include per diem—for all members of the Committee, for any travel associated with official Committee duties.

The Committee's membership is characterized by a range of backgrounds and knowledge appropriate to carry out its statutory obligations in advising VA. VA strives to develop a Committee membership that includes diversity in military service (*e.g.* rank, branch and era of service, deployments), diversity of professional experience and work with Veterans, diversity of subject matter expertise, and diversity in race/ethnicity, gender, religion, disability, geographical background, and profession. We ask that nominations include information of this type so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission: Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating the willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae; and

(4) A summary of the nominee's experience and qualifications relative to the membership considerations described above.

The Department makes every effort to ensure that the membership of VA federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identify, national origin, age, disability, or genetic information.

Dated: July 26, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–16400 Filed 7–31–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on September 18, 2018 at the Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 in Room 230, at 8:00 a.m. to 3:30 p.m. (EST) on September 18, 2018. All sessions will be open to the public, and for interested parties who cannot attend in person, there is a toll-free telephone

number 1 (800) 767–1750; access code 56978#.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia Theater of operations during the Gulf War in 1990–1991.

The Committee will review VA program activities related to Gulf War Veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. Presentations will include updates on the VA Gulf War research program and descriptions and discussions of new areas of research technology and treatments that can be applied to the health problems of Gulf War Veterans. Also, there will be a discussion of Committee business and activities.

The meeting will include time reserved for public comments in the afternoon. A signup sheet for 5-minute comments will be available at the meeting. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Karen Block by email at *karen.block@va.gov.*

Any member of the public seeking additional information should contact Dr. Block, Designated Federal Officer, at (202) 443–5600.

Dated: July 27, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–16472 Filed 7–31–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0788]

Agency Information Collection Activity: Description of Materials

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Loan Guaranty Service, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 31, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0788'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov* Please refer to ''OMB Control No. 2900–0788'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Description of Materials.

OMB Control Number: 2900–0788.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1852 is completed by builders in Specially Adapted Housing (SAH) projects involving construction as authorized under Title 38, U.S.C., section 2101 (a), section 2101 (b), and the Temporary Residence Adaptations (TRA) grant under Title 38, U.S.C., section 2102A. This form is also completed by builders who propose to construct homes to be purchased by veterans using their VA home loan benefit as granted in Title 38 U.S.C., section 3710(a)(1). SAH field staff review the data furnished on the form for completeness and it is essential to determine the acceptability of the construction materials to be used. In cases of new home construction, a technically qualified individual, not VA staff, is required to review the list of materials and certify they meet or exceed general residential construction material requirements, as specified by the International Residential Code and residential building codes adopted by local building authorities, and are in substantial conformity with VA Minimum Property requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 18875 on April 30, 2018, page 18875.

Affected Public: Private Sector.

Estimated Annual Burden: 9,251 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 18,501 per year.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–16471 Filed 7–31–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Wednesday,

No. 148 August 1, 2018

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 219

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries Research; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 219

[Docket No. 170127128–8546–01]

RIN 0648–BG64

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries Research

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS's Office of Protected Resources (OPR) has received a request from NMFS's Alaska Fisheries Science Center (AFSC) for authorization to take marine mammals incidental to fisheries research conducted in multiple specified geographical regions, over the course of five years from the date of issuance. As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 31, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0070, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0070,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

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

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of AFSC's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the AFSC's fisheries research activities in the Gulf of Alaska, Bering Sea, and Arctic Ocean. AFSC's request also includes fisheries research activities of the International Pacific Halibut Commission (IPHC), which occur in the Bering Sea, Gulf of Alaska, and off of the U.S. west coast.

We received an application from the AFSC requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to the use of active acoustic devices, as well as by visual disturbance of pinnipeds, and by Level A harassment, serious injury, or mortality incidental to the use of fisheries research gear. Please see ''Background'' below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the ''Proposed Mitigation'' section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent LOAs. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding AFSC fisheries research activities. These measures include:

- Required monitoring of the sampling areas to detect the presence of marine mammals before deployment of certain research gear.
- Required implementation of the mitigation strategy known as the ''move-on rule mitigation protocol'' which incorporates best professional judgment, when necessary during certain research fishing operations.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are issued, and notice is provided to the public.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as

an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

Accordingly, NMFS has prepared a draft Environmental Assessment (EA; *Draft Programmatic Environmental Assessment for Fisheries and Ecosystem Research Conducted and Funded by the Alaska Fisheries Science Center*) to consider the environmental impacts associated with the AFSC's proposed activities as well as the issuance of the regulations and subsequent incidental take authorization. The EA is posted online at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* Information in the EA, AFSC's application, and this notice collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On June 28, 2016, we received an adequate and complete request from AFSC for authorization to take marine mammals incidental to fisheries research activities. On October 18, 2016 (81 FR 71709), we published a notice of receipt of AFSC's application in the **Federal Register**, requesting comments and information related to the AFSC request for thirty days. We received comments jointly from The Humane Society of the United States and Whale and Dolphin Conservation (HSUS/WDC). Subsequently, AFSC presented substantive revisions to the application, including revisions to the take authorization request as well as incorporation of the IPHC fisheries research activities. We received this revised application, which was determined to be adequate and complete, on September 6, 2017. We then published a notice of its receipt in the **Federal Register**, requesting comments and information for thirty days, on September 14, 2017 (82 FR 43223). We received no comments in response to this second review period. The original comments received from HSUS/WDC were considered in development of this proposed rule and are available online at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

AFSC proposes to conduct fisheries research using trawl gear used at various levels in the water column, hook-and-line gear (including longlines with multiple hooks), gillnets, and other gear. If a marine mammal interacts with gear deployed by AFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.,* any injury that will likely result in mortality), or mortality. Although any given gear interaction could result in an outcome less severe than mortality or serious injury, we do not have sufficient information to allow parsing these potential outcomes. Therefore, AFSC presents a pooled estimate of the number of potential incidents of gear interaction and, for analytical purposes we assume that gear interactions would result in serious injury or mortality. AFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out may also occur, as a result of visual disturbance from vessels conducting AFSC research.

AFSC requests authorization to take individuals of 19 species by Level A harassment, serious injury, or mortality (hereafter referred to as M/SI) and of 25 species by Level B harassment. The proposed regulations would be valid for five years from the date of issuance.

Description of the Specified Activity

Overview

The AFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. AFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. Such research may also be conducted by cooperating scientists on non-NOAA vessels when the AFSC helps fund the research. The AFSC proposes to administer and conduct approximately 58 survey programs over the five-year period, within three separate research areas (some survey programs are conducted across more than one research area). The gear types used fall into several categories: Towed nets fished at various levels in the water column, longline gear, gillnets and seine nets, traps, and other gear. Only use of trawl nets, longlines, and gillnets are likely to result in interaction with marine mammals. Many of these surveys also use active acoustic devices.

The Federal government has a responsibility to conserve and protect living marine resources in U.S. waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine finfish and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed fishery management decisions, Congress created six regional fisheries science centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The AFSC is the research arm of NMFS in the Alaska region of the United States. The AFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the geographic research area described below and provides scientific information to support the North Pacific Fishery

Management Council and other domestic and international fisheries management organizations.

The IPHC, established by a convention between the governments of Canada and the United States, is an international fisheries organization mandated to conduct research on and management of the stocks of Pacific halibut (*Hippoglossus stenolepis*) within the Convention waters of both nations. The Northern Pacific Halibut Act of 1982 (16 U.S.C. 773), which amended the earlier Northern Pacific Halibut Act of 1937, is the enabling legislation that gives effect to the Convention in the United States. Although operating in U.S. waters (and, therefore, subject to the MMPA prohibition on ''take'' of marine mammals), the IPHC is not appropriately considered to be a U.S. citizen (as defined by the MMPA) and cannot be issued an incidental take authorization. For purposes of MMPA compliance, the AFSC sponsors the IPHC research activities occurring in U.S. waters, with applicable mitigation, monitoring, and reporting requirements conveyed to the IPHC via Letters of Acknowledgement issued by the AFSC pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Fishery-independent data necessary to the management of halibut stocks is collected using longline gear aboard chartered commercial vessels within multiple IPHC regulatory areas, including within U.S. waters of the Bering Sea, Gulf of Alaska, and off the U.S. west coast. The IPHC proposes to conduct two survey programs over the five-year period. IPHC activity and requested take authorization is described in Appendix C of AFSC's application.

Dates and Duration

The specified activity may occur at any time during the five-year period of validity of the proposed regulations. Dates and duration of individual surveys are inherently uncertain, based on congressional funding levels for the AFSC, weather conditions, or ship contingencies. In addition, cooperative research is designed to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects go through an annual competitive selection process to determine which projects should be funded based on proposals developed by many independent researchers and fishing industry participants.

Specified Geographical Region

The AFSC conducts research in Alaska within three research areas considered to be distinct specified geographical regions: the Gulf of Alaska Research Area (GOARA), the Bering Sea/Aleutian Islands Research Area (BSAIRA), and the Chukchi Sea and Beaufort Sea Research Area (CSBSRA). Please see Figures 2–1 through 2–3 in the AFSC application for maps of the three research areas. We note here that, while the specified geographical regions within which the AFSC operates may extend outside of the U.S. Exclusive Economic Zone (EEZ), *i.e.,* into the Canadian EEZ (but not including Canadian territorial waters), the MMPA's authority does not extend into foreign territorial waters. For further information about the specified geographical regions, please see the descriptions found in Sherman and Hempel (2009) and Wilkinson *et al.* (2009). As referred to here, productivity refers to fixated carbon (*i.e.,* g C/m^2/yr) and can be related to the carrying capacity of an ecosystem.

The GOARA includes marine waters offshore from Canada north to Alaska and west to longitude 170° W, including marine waters in the archipelagos of southeast Alaska, Prince William Sound, Cook Inlet, Kodiak, and the Alaska Peninsula. The region encompasses fjord-dominated regions out to the Alaska Panhandle as well as the North Pacific slope and basin and is characterized by numerous islands, deep fjords, and sheltered straits, as well as significant freshwater runoff from numerous rivers. The major oceanographic influence on the region is the Alaska Current, and sea ice is generally absent from the region. Average sea surface temperatures (SST) are 1–9 °C (winter) and 10–16 °C (summer), and the region is considered to be of moderately high productivity.

The BSAIRA includes marine waters west of longitude 170° W along the Aleutian Islands chain and north to the Bering Strait, primarily east of the international date line but also including an area west of the date line south of the Gulf of Anadyr. The Bering Sea, noted for its high productivity, is the world's third-largest semi-enclosed water body. This region includes the extremely wide, gradually sloping shelf of the Eastern Bering Sea, the narrow shelf and deep passes along the Aleutian chain, the deep Aleutian Basin, Kamchatka Basin and Bowers Ridge. The continental slope is incised with many canyons before dropping to a generally flat abyssal plain. The annual formation and retreat of sea ice through the Bering Strait and out over the northeast shelf is a major determinant of species distribution. Annual SST in the Bering Sea ranges from less than 2 °C (winter) to 6–14 °C (summer); in the Aleutian Islands annual SST ranges from 1–10 °C. Areas of note within the region include the Pribilof Islands and Bristol Bay.

The Aleutian Islands archipelago includes approximately 150 islands extending about 2,260 km westward from the Alaska Peninsula to the Kamchatka Peninsula that create a partial geographic barrier to the exchange of northern Pacific marine waters with Eastern Bering Sea waters; net circulation flow is from the Bering Sea to the Chukchi Sea through the Bering Strait. The Aleutian Islands continental shelf is narrow, ranging in width on the north and south sides of the islands from about 4 to 46 km, compared with the Eastern Bering Sea shelf, which ranges from 600–800 km from the shore to the shelf edge. The archipelago is adjacent to the Aleutian Trench, a subduction zone characterized by volcanic activity and earthquake zones. Numerous straits and passes connect the temperate North Pacific to the subpolar Bering Sea; the unique combination of rish nutrients and underwater volcanoes has created diverse and abundant coral habitat.

The CSBSRA includes waters of the Chukchi Sea east of the International Date Line and the Beaufort Sea west of the U.S.-Canada border within the U.S. EEZ. The region is a relatively shallow marginal sea with an extensive continental shelf and is characterized by the annual formation and deformation of sea ice. The Chukchi Sea portion is shallow (water depths to approximately 100 m), while the Beaufort Sea portion consists of narrow, shallow shelf descending to the Arctic Ocean slope and plains of the deep Canada Basin. SST is less than 12 °C in summer and averages 8 °C in the southwest and along the Beaufort coast. The area is considered to be of moderately high productivity in the summer during ice melt; however, the region is considered to be heterogeneous, with the Chukchi more productive than the Beaufort. The ice-free zone of the summer is generally about 150–200 km wide. However, the Arctic climate is changing significantly, and one result of the change is a reduction in the sea ice extent in at least some regions of the Arctic (*e.g.,* Doney *et al.,* 2012; Melillo *et al.,* 2014). Kotzebue Sound is a major coastal region here.

IPHC research activities are carried out within the BSAIRA and GOARA but also within a fourth specified

geographical region, *i.e.,* off the U.S. west coast (see Figure C–3 of the AFSC application). The IPHC operates from 36°40′ N (approximately Monterey Bay, California) at the southernmost extension northward to the Canadian border, including U.S. waters within Puget Sound. The California Current Large Marine Ecosystem (off the U.S. west coast) is considered to be of moderately high productivity. SST is fairly consistent, ranging from 9–14 °C in winter and 13–15 °C in summer. Cape Mendocino represents a major biogeographic break, and the region includes major estuaries such Puget Sound. The shelf is generally narrow in the region, and shelf-break topography (*e.g.,* underwater canyons) creates localized upwelling conditions that concentrate nutrients into areas of high topographic relief. The California Current determines the general hydrography off the coast of California. The current moves south along the western coast of North America, with extensive seasonal upwelling of colder, nutrient-rich subsurface waters predominant in the area south of Cape Mendocino. Significant interannual variation in productivity results from the effects of this coastal upwelling as well as from the El Niño-Southern Oscillation and the Pacific Decadal Oscillation. Both oscillations involve transitions from cooler, more productive conditions to warmer, less productive conditions but over different timescales.

IPHC conducts research within Puget Sound, which is affected by high amounts of runoff from the Fraser River. The river plume stimulates primary productivity, carrying nutrients northwards past Vancouver Island year-round. Puget Sound is one of the largest estuaries in the United States and is a place of great physical and ecological complexity and productivity. The average surface water temperature is 12.8 °C in summer and 7.2 °C in winter (Staubitz *et al.,* 1997), but surface waters frequently exceed 20 °C in the summer and fall. With nearly six million people (doubled since the 1960s), Puget Sound is also heavily influenced by human activity.

Detailed Description of Activities

The Federal government has a trust responsibility to protect living marine resources in waters of the United States. These waters extend to 200 nm from the shoreline and include the EEZ. The U.S. government has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside of the EEZ (*i.e.,* the high seas). To carry out its responsibilities over U.S. and international waters, Congress has enacted several statutes authorizing certain Federal agencies to administer programs to manage and protect living marine resources. Among these Federal agencies, NOAA has the primary responsibility for protecting marine finfish and shellfish species and their habitats. Within NOAA, NMFS has been delegated primary responsibility for the science-based management, conservation, and protection of living marine resources under statutes including the MSA, MMPA, and the Endangered Species Act (ESA). As noted above, the IPHC conducts research in support of halibut management under the terms of a convention between the United States and Canada, originally ratified in 1924 and amended most recently in 1979.

Within NMFS, six regional fisheries science centers direct and coordinate the collection of scientific information needed to inform fisheries management decisions. Each science center is a distinct entity and is the scientific focal point for a particular region. AFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in Alaska. AFSC provides scientific information to support the North Pacific Fishery Management Council and other domestic and international fisheries management organizations.

The AFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. AFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels, and some AFSC-funded research is conducted by cooperative scientists. The AFSC proposes to administer and conduct approximately 58 survey programs over the five-year period, with an additional two survey programs conducted by the IPHC.

The gear types used fall into several categories: Towed nets fished at various levels in the water column, longline gear, gillnets and seine nets, traps, and other gear. Only use of trawl nets, longlines, and gillnets are likely to result in interaction with marine mammals. Many of these surveys also use active acoustic devices. These surveys may be conducted aboard NOAA-operated research vessels (R/V), including the *Oscar Dyson* and *Fairweather,* the Alaska Department of Fish and Game-operated *Resolution,* and assorted other small vessels owned by AFSC, aboard vessels owned and operated by cooperating agencies and institutions, or aboard charter vessels.

In the following discussion, we summarily describe various gear types used by AFSC, with reference to specific fisheries and ecosystem research activities conducted by the AFSC. This is not an exhaustive list of gear and/or devices that may be utilized by AFSC but is representative of gear categories and is complete with regard to all gears with potential for interaction with marine mammals. Additionally, relevant active acoustic devices, which are commonly used in AFSC survey activities, are described separately in a subsequent section. Please see Appendix A of AFSC's application for further description, pictures, and diagrams of research gear and vessels. Full details regarding planned research activities are provided in Tables 1–1 and C–1 of AFSC's application, with specific gear used in association with each research project and full detail regarding gear characteristics and usage provided. Full detail is not repeated here.

Trawl nets—A trawl is a funnel-shaped net towed behind a boat to capture fish. The codend (or bag) is the fine-meshed portion of the net most distant from the towing vessel where fish and other organisms larger than the mesh size are retained. In contrast to commercial fishery operations, which generally use larger mesh to capture marketable fish, research trawls often use smaller mesh to enable estimates of the size and age distributions of fish in a particular area. The body of a trawl net is generally constructed of relatively coarse mesh that functions to gather schooling fish so that they can be collected in the codend. The opening of the net, called the mouth, is extended horizontally by large panels of wide mesh called wings. The mouth of the net is held open by hydrodynamic force exerted on the trawl doors attached to the wings of the net. As the net is towed through the water, the force of the water spreads the trawl doors horizontally apart. The top of a net is called the headrope, and the bottom is called the footrope. Bottom trawls may use bobbins or roller gear to protect the footrope as the net is dragged along the seabed.

The trawl net is usually deployed over the stern of the vessel and attached with two cables (or warps) to winches on the deck of the vessel. The cables are played out until the net reaches the fishing depth. Trawl vessels typically travel at speeds of 2–5 kn while towing the net for time periods up to several hours. The duration of the tow depends on the purpose of the trawl, the catch rate, and the target species. At the end of the tow the net is retrieved and the

contents of the codend are emptied onto the deck. For research purposes, the speed and duration of the tow and the characteristics of the net are typically standardized to allow meaningful comparisons of data collected at different times and locations. Active acoustic devices (described later) incorporated into the research vessel and the trawl gear monitor the position and status of the net, speed of the tow, and other variables important to the research design.

AFSC research trawling activities utilize pelagic (or midwater) and surface trawls, which are designed to operate at various depths within the water column but not to contact the seafloor, as well as bottom trawls. Some research efforts use various commercial trawl nets (commercial midwater trawls may be 75–136 m in width with opening height of 10–20 m, while commercial bottom trawls may be 18–24 m in width with 4–8 m opening height), while others use specific trawls. Examples of the latter include the Poly Nor'eastern bottom trawl, which has a 27.2-m headrope, 24.9-m footrope, and 5.8-m vertical opening; otter bottom trawl with 6-m headrope; the 83–112 Eastern bottom trawl, with 25-m headrope and 34-m footrope; Kodiak bottom trawl (3 m x 4 m x 8 m); the 20 m x 20 m Nordic 264 midwater trawl; 12 m x 12 m midwater anchovy trawl (midwater); Cantrawl surface trawl, with 55-m width and 25-m depth; and Aleutian wing pelagic trawl, with 82.3-m footrope/headrope and a 27.4-m vertical opening. Tow durations are typically 10–30 min (though some experimental trawls may be conducted for much longer, *i.e.,* a period of hours), with tow depths dependent on the purpose of the survey.

AFSC also uses beam trawls, a type of bottom trawl in which the horizontal opening of the net is provided by a heavy beam mounted at each end on guides or skids that travel along the seabed. AFSC beam trawls are 1 m x 1m. On sandy or muddy bottoms, a series of ''tickler'' chains are strung between the skids ahead of the net to stir up the fish from the seabed and chase them into the net. On rocky grounds, these ticklers may be replaced with chain matting. Several trawls may be towed, one on each side of the vessel. The trawls are towed along the seafloor at speeds of 1 to 2 kn. In some shallow, nearshore locations, push trawls may be used, *i.e.,* vessels push nets.

Longline—Longline vessels fish with baited hooks attached to a mainline (or groundline). The length of the longline and the number of hooks depend on the species targeted, the size of the vessel, and the purpose of the fishing activity. Hooks are attached to the mainline by another thinner line called a gangion. The length of the gangion and the distance between gangions depends on the purpose of the fishing activity. Depending on the fishery, longline gear can be deployed on the seafloor (bottom longline), in which case weights are attached to the mainline, or near the surface of the water (pelagic longline), in which case buoys are attached to the mainline to provide flotation and keep the baited hooks suspended in the water. Radar reflectors, radio transmitters, and light sources are often used to help fishers determine the location of the longline gear prior to retrieval. Segments of bottom longline gear, which are connected to form a single continuous mainline, are often referred to as skates.

A commercial longline can be miles long and have thousands of hooks attached, although longlines used for research surveys are often shorter. However, the longline gear used for AFSC research surveys is typically similar in scale to commercial gear, with 16-km mainlines and 7,200 hooks. IPHC gear consists of 1,800-ft (549-m) skates, with 100 hooks per skate. Three to ten skates may be fished at each sampling station. There are no internationally-recognized standard measurements for hook size, and a given size may be inconsistent between manufacturers. Larger hooks, as are used in longlining, are referenced by increasing whole numbers followed by a slash and a zero as size increases (*e.g.,* 1/0 up to 20/0). The numbers represent relative sizes, normally associated with the gap (the distance from the point tip to the shank).

The time period between deployment and retrieval of the longline gear is the soak time. Soak time is an important parameter for calculating fishing effort. For commercial fisheries the goal is to optimize the soak time in order to maximize catch of the target species while minimizing the bycatch rate and minimizing damage to target species that may result from predation by sharks or other predators. AFSC soak times range from 2–3 hours, while IPHC soak times are typically 5 hours. AFSC also uses hook-and-line, *i.e.,* rod-and-reel, for some survey efforts, totaling approximately 240 rod-hrs per year over 5 days.

Other nets—AFSC surveys utilize various small, fine-mesh, towed nets designed to sample small fish and pelagic invertebrates. These nets can be broadly categorized as small trawls (which are separated from large trawl nets due to small trawls' discountable potential for interaction with marine mammals; see ''Potential Effects of the Specified Activity on Marine Mammals and their Habitat'') and plankton nets.

1. The Tucker trawl is a medium-sized single-warp net used to study pelagic fish and zooplankton. The Tucker trawl consists of a series of nets that can be opened and closed sequentially via stepping motor without retrieving the net from the fishing depth. It is designed for deep oblique tows where up to three replicate nets can be sequentially operated by a double release mechanism and is typically equipped with a full suite of instruments, including inside and outside flow meters; conductivity, temperature, and depth profilers (CTD); and pitch sensor.

2. The Multiple Opening/Closing Net and Environmental Sensing System (MOCNESS) uses a stepping motor to sequentially control the opening and closing of the net. The MOCNESS uses underwater and shipboard electronics to control the device. The electronics system continuously monitors the functioning of the nets, frame angle, horizontal velocity, vertical velocity, volume filtered, and selected environmental parameters, such as salinity and temperature. The MOCNESS is used for specialized zooplankton surveys.

3. AFSC also uses various neuston nets, which are frame trawls towed horizontally at the top of the water column in order to capture neuston (*i.e.,* organisms that inhabit the water's surface).

4. An epibenthic tow sled is an instrument designed to collect organisms that live on bottom sediments. It consists of a fine mesh net, typically 1 m x 1 m opening, attached to a rigid frame with runners to help it move along the substrate.

The remainder of nets described here are plankton nets, which usually consist of fine mesh attached to a weighted frame which spreads the mouth of the net to cover a known surface area in order to sample plankton and fish eggs from various parts of the water column.

5. Ring nets are used to capture plankton with vertical tows. These nets consist of a circular frame and a cone-shaped net with a collection jar at the codend. The net, attached to a labeled dropline, is lowered into the water while maintaining the net's vertical position. When the desired depth is reached, the net is pulled straight up through the water column to collect the sample.

6. Bongo nets are towed through the water at an oblique angle to sample plankton over a range of depths. Similar to ring nets, these nets typically have a

cylindrical section coupled to a conical portion that tapers to a detachable codend constructed of nylon mesh. During each plankton tow, the bongo nets are deployed to depth and are then retrieved at a controlled rate so that the volume of water sampled is uniform across the range of depths. A collecting bucket, attached to the codend of the net, is used to contain the plankton sample. Some bongo nets can be opened and closed using remote control to enable the collection of samples from particular depth ranges. A group of depth-specific bongo net samples can be used to establish the vertical distribution of zooplankton species in the water column at a site. Bongo nets are generally used to collect zooplankton for research purposes and are not used for commercial harvest.

Gillnets—Gillnets consist of vertical netting held in place by floats and weights to selectively target fish of uniform size depending on the netting size. Typical gillnets consist of monofilament, multi-monofilament, or multifilament nylon constructed of single, double, or triple netting/paneling of varying mesh sizes, depending on their use and target species. A specific mesh size will catch a target species of a limited size range, allowing this gear type to be very selective. Some AFSC survey activities use small gillnets (10 m x 2 m) with 30-minute set durations; however, gillnet survey activities at Little Port Walter Marine Station in southeast Alaska use larger nets (150 ft x 15 ft (46 m x 5 m)) with longer soak times (2–4 hours).

Seine nets—Seine nets typically hang vertically in the water with the bottom edge held down by weights and the top edge buoyed by floats. Seine nets can be deployed from the shore as a beach seine or from a boat and are actively fished, in comparison with gillnets which may be similar but fish passively. AFSC uses beach seines, which are deployed from shore to surround all fish in the nearshore area, and typically have one end fastened to the shore while the other end is set out in a wide arc and brought back to the beach. This may be done by hand or with a small boat. AFSC research uses some larger beach seines (61 m x 5 m) as well as smaller nets (5 m x 2.5 m). A pole seine is a type of beach seine deployed by hand. The net is pulled along the bottom by hand as two or more people hold the poles and walk through the water. Fish and other organisms are captured by walking the net towards shore or tilting the poles backwards and lifting the net out of the water.

Traps and pots—Traps and pots are submerged, three-dimensional devices, often baited, that permit organisms to enter the enclosure but make escape extremely difficult or impossible. Most traps are attached by a rope to a buoy on the surface of the water and may be deployed in series. The trap entrance can be regulated to control the maximum size of animal that can enter, and the size of the mesh in the body of the trap can regulate the minimum size that is retained. In general, the species caught depends on the type and characteristics of the pot or trap used. AFSC uses fyke traps and crab pots of various sizes.

Fyke traps are bag-shaped nets held open by frames or hoops, often outfitted with wings and/or leaders to guide fish towards the entrance of the actual trap. Fyke trap wings can be set up to form a barrier across a channel, trapping fish that attempt to proceed through the channel. As the tide ebbs, fish eventually seek to leave the wetland channel and are then trapped. AFSC sets fyke traps that are approximately 40 m wide; however, these are only used in freshwater. AFSC also uses net pens, hoop nets, and weirs for some research.

Dredge—A typical dredge consists of a mouth frame with an attached collection bag. Fishers drag a dredge across the sea floor, either scraping or penetrating the bottom. Scraping dredges collect target species (*e.g.,* oysters, scallops, clams, and mussels) in the top layer of seafloor sediment with rakes or teeth that scoop up the substrate. AFSC uses a six foot wide Virginia crab style dredge, which consists of a heavy metal rectangular form bearing a toothed drag bar and a mesh bag to collect specimens.

Conductivity, temperature, and depth profilers—A CTD profiler is the primary research tool for determining chemical and physical properties of seawater. A shipboard CTD is made up of a set of small probes attached to a large (1–2 m diameter) metal rosette wheel. The rosette is lowered through the water column on a cable, and CTD data are observed in real time via a conducting cable connecting the CTD to a computer on the ship. The rosette also holds a series of sampling bottles that can be triggered to close at different depths in order to collect a suite of water samples that can be used to determine additional properties of the water over the depth of the CTD cast. A standard CTD cast, depending on water depth, requires two to five hours to complete. The data from a suite of samples collected at different depths are often called a depth profile. Depth profiles for different variables can be compared in order to glean information about physical, chemical, and biological processes occurring in the water column. Salinity, temperature, and depth data measured by the CTD instrument are essential for characterization of seawater properties.

Tables 1–1 and C–1 of the AFSC's application provide detailed information of all surveys planned by AFSC and IPHC; full detail is not repeated here. We note here that IPHC survey activities do not use active acoustic systems for data acquisition purposes. Therefore, we do not consider the potential for Level B harassment that may result from use of such systems other than for AFSC research programs in the GOARA, BSAIRA, and CSBSRA. Many of these surveys also use small trawls, plankton nets, and/or other gear; however, only gear with likely potential for marine mammal interaction is described. Here we provide a summary of projected annual survey effort in the different research areas for those gears that we believe present the potential for marine mammal interaction (Table 1). This summary is intended only to provide a sense of the level of effort, and actual level of effort may vary from year to year. Gear specifications vary; please see Tables 1–1 and C–1 of AFSC's application.

TABLE 1—PROJECTED ANNUAL AFSC SURVEY EFFORT BY RESEARCH AREA AND GEAR TYPE

Survey type	Gear type	Tows/sets	Duration per tow/set
GOARA			
Bottom trawl	Poly Nor-Eastern (PNE)	59	10 min.
Bottom trawl	Eastern otter	380	10–25 min.
Bottom trawl	Various (commercial)	20–40	45 min to 6.5 hr.
Bottom trawl	To be determined	50	20 min.
Bottom trawl	PNE	820	15 min.
Bottom trawl	PNE	70	15–30 min.

TABLE 1—PROJECTED ANNUAL AFSC SURVEY EFFORT BY RESEARCH AREA AND GEAR TYPE—Continued

Survey type	Gear type	Tows/sets	Duration per tow/set
Bottom trawl	PNE	20	10–20 min.
Bottom trawl	PNE	20	variable.
Bottom trawl	Various (commercial)	4–8	5–10 min.
Bottom trawl	Various (commercial)	6–8	5–45 min.
Midwater trawl	Various (commercial)	20–40	45 min to 3 hr.
Midwater trawl	Anchovy	50–75	Up to 1 hr.
Midwater trawl	Otter	20	20 min.
Midwater trawl	Nordic 264	96	20 min.
Midwater trawl	Cantrawl	80	30 min.
Midwater trawl	Aleutian wing (AWT)	140	10 min to 1 hr.
Gillnet	10 m × 2 m	10	30 min.
Gillnet	46 m × 5 m	50	2–4 hr.
Bottom longline	7,200 hooks (13/0)	95	3 hr.
Bottom longline	< 300 hooks (13/0)	7	2 hr.
BSAIRA			
Bottom trawl	PNE	420	15 min.
Bottom trawl	PNE	70	15–30 min.
Bottom trawl	Bering Sea Combo 101/130	Variable (average 88)	10–90 min.
Bottom trawl	83–112 Eastern otter	536	30 min.
Bottom trawl	83–112 Eastern otter	15	variable.
Bottom trawl	Various (commercial)	40–90	45 min to 6.5 hr
Bottom trawl	PNE	10	variable.
Bottom trawl	PNE	200	30 min.
Bottom trawl	To be determined	50	20 min.
Midwater trawl	Marinovich	35	15–60 min.
Midwater trawl	Cantrawl	185	30 min.
Midwater trawl	Various (commercial)	40–90	45 min to 3 hr.
Midwater trawl	Anchovy	100–125	variable.
Midwater trawl	AWT	110	10 min to 1 hr.
Bottom longline	7,200 hooks (13/0)	75	3 hr.
CSBSRA			
Bottom trawl	83–112 Eastern otter	143	15 min.
Midwater trawl	Cantrawl	70	30 min.

Please note that Table 1 does not include projected survey effort by IPHC. IPHC uses bottom longline gear to sample between an estimated 1,100 and 1,300 survey stations in U.S. waters per year. Although the number of survey stations is estimated, IPHC states that the maximum number of stations would not exceed 1,500. At each station, IPHC fishes 3–10 skates of longline gear, each with 100 hooks (16/0), for a soak time of 5 hours at each station. Hooks are spaced at 18-ft (5.5-m) intervals on 24- to 48-in (0.6- to 1.2-m) gangions. Survey stations are located in water depths from 18–732 m in shelf waters. Please see Figures C–3 through C–5 for depictions of IPHC's survey station distribution.

IPHC also conducts survey effort in order to collect specimens of halibut gonads on a monthly basis. Gear is not standardized for these surveys and would be that which is typically used by the commercial halibut and sablefish fleet. Gear differences are not expected to differentially affect marine mammals, which interact similarly with all of these commercial gears. IPHC requires collection of 50 male and 50 female specimens per month and estimates that this requires approximately 50 total annual days at sea.

Description of Active Acoustic Sound Sources—This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to AFSC's specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. We also describe the active acoustic devices used by AFSC. As noted previously, IPHC does not use active acoustic devices for data acquisition purposes. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the

duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event.

Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams (as for the sources considered here) or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz; and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse; but, due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

We use generic sound exposure thresholds of 160 dB rms SPL and 120 dB rms SPL to determine when an activity that produces impulsive or continuous sound, respectively, might result in impacts to a marine mammal such that a take by Level B harassment might occur. These thresholds should be considered guidelines for estimating when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically

lacking and we consider these thresholds as step functions.

As noted above, continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level, while intermittent sounds are defined as sounds with interrupted levels of low or no sound. Thus, echosounder signals are not continuous sounds but rather intermittent sounds. Intermittent sounds can further be defined as either impulsive or non-impulsive. Similar to impulsive sounds, echosounder signals have durations that are typically very brief (< 1 sec) and have temporal characteristics that more closely resemble those of impulsive sounds than non-impulsive sounds, which typically have more gradual rise times and longer decays. With regard to behavioral thresholds, we consider the temporal and spectral characteristics of echosounder signals to more closely resemble those of an impulse sound than a continuous sound. Therefore, NMFS has determined that the 160-dB threshold for impulsive sources is most appropriate for use in considering the potential effects of the AFSC's activities.

A wide range of active acoustic devices are used in AFSC fisheries surveys for remotely sensing bathymetric, oceanographic, and biological features of the environment. Most of these sources involve relatively high frequency, directional, and brief repeated signals tuned to provide sufficient focus and resolution on specific objects. AFSC also uses passive listening sensors (*i.e.,* remotely and passively detecting sound rather than producing it), which do not have the potential to impact marine mammals. AFSC active acoustic sources include various echosounders (*e.g.,* multibeam systems), scientific sonar systems, positional sonars (*e.g.,* net sounders for determining trawl position), and environmental sensors (*e.g.,* current profilers).

Mid- and high-frequency underwater acoustic sources typically used for scientific purposes operate by creating an oscillatory overpressure through rapid vibration of a surface, using either electromagnetic forces or the piezoelectric effect of some materials. A vibratory source based on the piezoelectric effect is commonly referred to as a transducer. Transducers are usually designed to excite an acoustic wave of a specific frequency, often in a highly directive beam, with the directional capability increasing with operating frequency. The main parameter characterizing directivity is the beam width, defined as the angle subtended by diametrically opposite ''half power'' (−3 dB) points of the main lobe. For different transducers at a single operating frequency the beam width can vary from 180° (almost omnidirectional) to only a few degrees. Transducers are usually produced with either circular or rectangular active surfaces. For circular transducers, the beam width in the horizontal plane (assuming a downward pointing main beam) is equal in all directions, whereas rectangular transducers produce more complex beam patterns with variable beam width in the horizontal plane. Please see Zykov and Carr (2014) for further discussion of electromechanical sound sources.

The types of active sources employed in fisheries acoustic research and monitoring may be considered in two broad categories here (Category 1 and Category 2), based largely on their respective operating frequency (*e.g.,* within or outside the known audible range of marine species) and other output characteristics (*e.g.,* signal duration, directivity). As described below, these operating characteristics result in differing potential for acoustic impacts on marine mammals.

Category 1 active fisheries acoustic sources include those with high output frequencies (>180 kHz) that are outside the known functional hearing capability of any marine mammal. Sounds that are above the functional hearing range of marine animals may be audible if sufficiently loud (*e.g.,* Møhl, 1968). However, the relative output levels of these sources mean that they would potentially be detectable to marine mammals at maximum distances of only a few meters, and are highly unlikely to be of sufficient intensity to result in behavioral harassment. These sources also generally have short duration signals and highly directional beam patterns, meaning that any individual marine mammal would be unlikely to even receive a signal that would almost certainly be inaudible.

We are aware of two studies (Deng *et al.*, 2014; Hastie *et al.*, 2014) demonstrating some behavioral reaction by marine mammals to acoustic systems operating at user-selected frequencies above 200 kHz. These studies generally indicate only that sub-harmonics could be detectable by certain species at distances up to several hundred meters. However, this detectability is in reference to ambient noise, not to NMFS's established 160-dB threshold for assessing the potential for incidental take for these sources. Source levels of the secondary peaks considered in these studies—those within the hearing range of some marine mammals—range from 135–166 dB, meaning that these sub-harmonics would either be below levels likely to result in Level B harassment or would attenuate to such a level within a few meters. Beyond these important study details, these high-frequency (*i.e.,* Category 1) sources and any energy they may produce below the primary frequency that could be audible to marine mammals would be dominated by a few primary sources that are operated near-continuously, and the potential range above threshold would be so small as to essentially discount them. Therefore, Category 1 sources are not expected to have any effect on marine mammals. Further, recent sound source verification testing of these and other similar systems did not observe any sub-harmonics in any of the systems tested under controlled conditions (Crocker and Fratantonio, 2016). While this can occur during actual operations, the phenomenon may be the result of issues with the system or its installation on a vessel rather than an issue that is inherent to the output of the system. Category 1 sources are not considered further in this document.

Category 2 acoustic sources, which are present on most AFSC fishery research vessels, include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers with lower output frequencies than Category 1 sources. Category 2 active acoustic sources have moderate to high output frequencies (10 to 180 kHz) that are generally within the functional hearing range of marine mammals and therefore have the potential to cause behavioral harassment. However, while likely potentially audible to certain species, these sources have generally short ping durations and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. These characteristics reduce the likelihood of an animal receiving or perceiving the signal. A number of these sources, particularly those with relatively lower output frequencies coupled with higher output levels can be operated in different output modes (*e.g.*, energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impact on marine mammals.

We now describe specific acoustic sources used by AFSC. The acoustic system used during a particular survey is optimized for surveying under specific environmental conditions (*e.g.*, depth and bottom type). Lower frequencies of sound travel further in

the water (*i.e.*, good range) but provide lower resolution (*i.e.*, are less precise). Pulse width and power may also be adjusted in the field to accommodate a variety of environmental conditions. Signals with a relatively long pulse width travel further and are received more clearly by the transducer (*i.e.*, good signal-to-noise ratio) but have a lower range resolution. Shorter pulses provide higher range resolution and can detect smaller and more closely spaced objects in the water. Similarly, higher power settings may decrease the utility of collected data. Power level is also adjusted according to bottom type, as some bottom types have a stronger return and require less power to produce data of sufficient quality. Power is typically set to the lowest level possible in order to receive a clear return with the best data. Survey vessels may be equipped with multiple acoustic systems; each system has different advantages that may be utilized depending on the specific survey area or purpose. In addition, many systems may be operated at one of two frequencies or at a range of frequencies. Primary source categories are described below, and characteristics of representative predominant sources are summarized in Table 2. Predominant sources are those that, when operated, would be louder than and/or have a larger acoustic footprint than other concurrently operated sources, at relevant frequencies.

(1) *Multi-Frequency Narrow Beam Scientific Echosounders*—Echosounders and sonars work by transmitting acoustic pulses into the water that travel through the water column, reflect off the seafloor, and return to the receiver. Water depth is measured by multiplying the time elapsed by the speed of sound in water (assuming accurate sound speed measurement for the entire signal path), while the returning signal itself carries information allowing ''visualization'' of the seafloor. Multi-frequency split-beam sensors are deployed from AFSC survey vessels to acoustically map the distributions and estimate the abundances and biomasses of many types of fish; characterize their biotic and abiotic environments; investigate ecological linkages; and gather information about their schooling behavior, migration patterns, and avoidance reactions to the survey vessel. The use of multiple frequencies allows coverage of a broad range of marine acoustic survey activity, ranging from studies of small plankton to large fish schools in a variety of environments from shallow coastal waters to deep ocean basins. Simultaneous use of several discrete echosounder frequencies facilitates accurate estimates of the size of individual fish, and can also be used for species identification based on differences in frequency-dependent acoustic backscattering between species.

(2) *Multibeam Echosounder and Sonar*—Multibeam echosounders and sonars operate similarly to the devices described above. However, the use of multiple acoustic ''beams'' allows coverage of a greater area compared to single beam sonar. The sensor arrays for multibeam echosounders and sonars are usually mounted on the keel of the vessel and have the ability to look horizontally in the water column as well as straight down. Multibeam echosounders and sonars are used for mapping seafloor bathymetry, estimating fish biomass, characterizing fish schools, and studying fish behavior.

(3) *Single-Frequency Omnidirectional Sonar*—These sources provide omnidirectional imaging around the source with different vertical beamwidths available, which results in differential transmitting beam patterns. The cylindrical multi-element transducer allows the omnidirectional sonar beam to be electronically tilted down to $-90°$, allowing automatic tracking of schools of fish within the entire water volume around the vessel.

(4) *Acoustic Doppler Current Profiler (ADCP)*—An ADCP is a type of sonar used for measuring water current velocities simultaneously at a range of depths. Whereas current depth profile measurements in the past required the use of long strings of current meters, the ADCP enables measurements of current velocities across an entire water column. The ADCP measures water currents with sound, using the Doppler effect. A sound wave has a higher frequency when it moves towards the sensor (blue shift) than when it moves away (red shift). The ADCP works by transmitting ''pings'' of sound at a constant frequency into the water. As the sound waves travel, they ricochet off particles suspended in the moving water, and reflect back to the instrument. Due to the Doppler effect, sound waves bounced back from a particle moving away from the profiler have a slightly lowered frequency when they return. Particles moving toward the instrument send back higher frequency waves. The difference in frequency between the waves the profiler sends out and the waves it receives is called the Doppler shift. The instrument uses this shift to calculate how fast the particle and the water around it are moving. Sound waves that hit particles far from the profiler take longer to come back than waves that strike close by. By measuring the time it takes for the waves to return to the sensor, and the Doppler shift, the profiler can measure current speed at many different depths with each series of pings.

An ADCP anchored to the seafloor can measure current speed not just at the bottom, but at equal intervals to the surface. An ADCP instrument may be anchored to the seafloor or can be mounted to a mooring or to the bottom of a boat. ADCPs that are moored need an anchor to keep them on the bottom, batteries, and a data logger. Vessel-mounted instruments need a vessel with power, a shipboard computer to receive the data, and a GPS navigation system so the ship's movements can be subtracted from the current velocity data. ADCPs operate at frequencies between 75 and 300 kHz.

(5) *Net Monitoring Systems*—During trawling operations, a range of sensors may be used to assist with controlling and monitoring gear. Net sounders give information about the concentration of fish around the opening to the trawl, as well as the clearances around the opening and the bottom of the trawl; catch sensors give information about the rate at which the codend is filling; symmetry sensors give information about the optimal geometry of the trawls; and tension sensors give information about how much tension is in the warps and sweeps.

TABLE 2—OPERATING CHARACTERISTICS OF REPRESENTATIVE PREDOMINANT AFSC ACTIVE ACOUSTIC SOURCES

Active acoustic system	Operating frequencies	Maximum source level	Single ping duration (ms) and repetition rate (Hz)	Orientation/directionality	Nominal beamwidth
Simrad EK60 narrow beam echosounder.	18, 38, 70, 120, 200 kHz	226.7 dB ..	1 ms at 1 Hz ..	Downward looking	11°

TABLE 2—OPERATING CHARACTERISTICS OF REPRESENTATIVE PREDOMINANT AFSC ACTIVE ACOUSTIC SOURCES—Continued

Active acoustic system	Operating frequencies	Maximum source level	Single ping duration (ms) and repetition rate (Hz)	Orientation/directionality	Nominal beamwidth
Simrad ME70 narrow beam echosounder.	70 kHz	226.7 dB	1 ms at 1 Hz	Downward looking	11°
Simrad ES60 multibeam echosounder.	38 and 120 kHz	226.6 dB	1 ms at 1 Hz	Downward looking	7°
Reson 7111 multibeam echosounder.	38, 50, 100, 180, 300 kHz	230 dB	not provided	Downward looking	150°

Description of Marine Mammals in the Area of the Specified Activity

We have reviewed AFSC's species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of AFSC's application (and Sections 3 and 4 of Appendix C, which specifically addresses the IPHC activities), instead of reprinting the information here. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 3 lists all species with expected potential for occurrence in the specified geographical regions where AFSC and IPHC propose to conduct the specified activities and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2017). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is discussed in greater detail later in this document (see ''Negligible Impact Analysis'').

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in the specified geographical regions are assessed in either NMFS's U.S. Alaska SARs or U.S. Pacific SARs. All values presented in Table 3 are the most recent available at the time of writing and are available in the 2016 SARs (Carretta *et al.,* 2017; Muto *et al.,* 2017) or draft 2017 SARs (available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

Forty species (with 88 managed stocks) are considered to have the potential to co-occur with AFSC and IPHC activities. Species that could potentially occur in the proposed research areas but are not expected to have the potential for interaction with AFSC research gear or that are not likely to be harassed by AFSC's use of active acoustic devices are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. The only species considered to be extralimital here are the narwhal (*Monodon monoceros;* CSBSRA only) and the Bryde's whale (*Balaenoptera edeni brydei;* IPHC U.S. west coast research area only). In addition, the sea otter is found in coastal waters—with the northern (or eastern) sea otter (*Enhydra lutris kenyoni*) found in Alaska—and the Pacific walrus (*Odobenus rosmarus divergens*) and polar bear (*Ursus maritimus*) may also occur in AFSC research areas. However, these species are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Two populations of gray whales are recognized, eastern and western North Pacific (ENP and WNP). WNP whales are known to feed in the Okhotsk Sea and off of Kamchatka before migrating south to poorly known wintering grounds, possibly in the South China Sea. The two populations have historically been considered geographically isolated from each other; however, data from satellite-tracked whales indicate that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.,* 2011), and, in one case where the satellite tag remained attached to the whale for a longer period, a WNP whale was tracked from Russia to Mexico and back again (IWC, 2012). Between 22–24 WNP whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (IWC, 2012; Weller *et al.,* 2011; Burdin *et al.,* 2011). Urban *et al.* (2013) compared catalogs of photo-identified individuals from Mexico with photographs of whales off Russia and reported a total of 21 matches. Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern Pacific during the winter breeding season.

However, the AFSC does not believe that any gray whale (WNP or ENP) would be likely to interact with its research gear, as it is extremely unlikely that a gray whale in close proximity to AFSC research activity would be one of the few WNP whales that have been documented in the eastern Pacific. The likelihood that a WNP whale would interact with AFSC research gear is insignificant and discountable, and WNP gray whales are omitted from further analysis.

BILLING CODE 3510–22–P

Table 3. Marine Mammals Potentially Present in the Vicinity of AFSC Research Activities.

Common name	Scientific name	Stock	Occurrence[1]				ESA/ MMPA status; Strategic (Y/N)[2]	Stock abundance (CV, N_{min}, most recent abundance survey)[3]	PBR	Annual M/SI[4]
			WC	GOA	BSAI	CSBS				
Order Cetartiodactyla – Cetacea – Superfamily Mysticeti (baleen whales)										
Family Balaenidae										
North Pacific right whale	*Eubalaena japonica*	Eastern North Pacific (ENP)		X	X		E/D; Y	31 (0.226; 26; 2013)	0.05	0
Bowhead whale	*Balaena mysticetus*	Western Arctic			X	X	E/D; Y	16,820 (0.052; 16,100; 2011)	161	43
Family Eschrichtiidae										
Gray whale	*Eschrichtius robustus*	ENP	X	X	X	X	-; N	20,990 (0.05; 20,125; 2011)	624	132
Family Balaenopteridae (rorquals)										
Humpback whale	*Megaptera novaeangliae kuzira*	California/ Oregon/ Washington (CA/OR/WA)*	X				E/D; Y	1,918 (0.03; 1,876; 2014)	11[11]	≥9.2
		Central North Pacific (CNP)*		X	X		E/D; Y	10,103 (0.3; 7,890; 2006)	83	25
		Western North Pacific*		X	X	X	E/D; Y	1,107 (0.3; 865; 2006)	3	3.2
Minke whale	*Balaenoptera acutorostrata scammoni*	CA/OR/WA	X				-; N	636 (0.72; 369; 2014)	3.5	≥1.3
		Alaska*		X	X	X	-; N	Unknown	n/a	0
Sei whale	*B. borealis borealis*	ENP	X	X	X		E/D; Y	519 (0.4; 374; 2014)	0.75	0
Fin whale	*B. physalus physalus*	CA/OR/WA	X				E/D; Y	9,029 (0.12; 8,127; 2014)	81	≥2.0
		Northeast Pacific*		X	X	X	E/D; Y	Unknown	n/a	0.4
Blue whale	*B. musculus musculus*	ENP	X	X	X		E/D; Y	1,647 (0.07; 1,551; 2011)	2.3[11]	≥0.2
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)										
Family Physeteridae										
Sperm whale	*Physeter macrocephalus*	CA/OR/WA	X				E/D; Y	1,997 (0.57; 1,270; 2014)	2.5	0.9
		North Pacific*		X	X		E/D; Y	Unknown	n/a	3.7
Family Kogiidae										
Pygmy sperm whale	*Kogia breviceps*	CA/OR/WA	X				-; N	4,111 (1.12; 1,924; 2014)	19	0

Dwarf sperm whale	*K. sima*	CA/OR/WA[6]	X				-; N	Unknown	n/a	0
Family Ziphiidae (beaked whales)										
Cuvier's beaked whale	*Ziphius cavirostris*	CA/OR/WA	X				-; N	3,274 (0.67; 2,059; 2014)	21	<0.1
		Alaska		X	X		-; N	Unknown	n/a	0
Baird's beaked whale	*Berardius bairdii*	CA/OR/WA	X				-; N	2,697 (0.6; 1,633; 2014)	16	0
		Alaska		X	X		-; N	Unknown	n/a	0
Stejneger's beaked whale	*Mesoplodon stejnegeri*	Alaska		X	X		-; N	Unknown	n/a	0
Hubbs' beaked whale	*M. carlhubbsi*	CA/OR/WA[7]	X				-; N	3,044 (0.54; 1,967; 2014)	20	0.1
Blainville's beaked whale	*M. densirostris*		X							
Ginkgo-toothed beaked whale	*M. ginkgodens*		X							
Perrin's beaked whale	*M. perrini*		X							
Lesser (pygmy) beaked whale	*M. peruvianus*		X							
Stejneger's beaked whale	*M. stejnegeri*		X							
Family Monodontidae										
Beluga whale	*Delphinapterus leucas*	Beaufort Sea[9]			X	X	-; N	39,258 (0.229; 32,453; 1992)	649	139
		Eastern Chukchi Sea			X	X	-; N	20,752 (0.7; 12,194; 2012)	244	67
		Eastern Bering Sea[9]			X		-; N	19,186 (0.32; 14,751; 2000)	n/a	181
		Bristol Bay[9]			X		-; N	1,926 (0.25; 2,435; 2005)	58	25
		Cook Inlet		X			E/D; Y	312 (0.1; 287; 2014)	n/a	0
Family Delphinidae										
Common bottlenose dolphin	*Tursiops truncatus truncatus*	CA/OR/WA Offshore	X				-; N	1,924 (0.54; 1,255; 2014)	11	≥1.6
		California Coastal	X				-; N	453 (0.06; 346; 2011)	2.7	≥2.0
Striped dolphin	*Stenella coeruleoalba*	CA/OR/WA	X				-; N	29,211 (0.2; 24,782; 2014)	238	≥0.8

ENP long-beaked common dolphin	*Delphinus delphis bairdii*	California	X				-; N	101,305 (0.49; 68,432; 2014)	657	≥35.4
Common dolphin	*D. d. delphis*	CA/OR/WA	X				-; N	969,861 (0.17; 839,325; 2014)	8,393	≥40
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	CA/OR/WA	X				-; N	26,814 (0.28; 21,195; 2014)	191	7.5
		North Pacific[9]		X	X		-; N	26,880 (n/a; 26,880; 1990)	n/a	0
Northern right whale dolphin	*Lissodelphis borealis*	CA/OR/WA	X				-; N	26,556 (0.44; 18,608; 2014)	179	3.8
Risso's dolphin	*Grampus griseus*	CA/OR/WA	X				-; N	6,336 (0.32; 4,817; 2014)	46	≥3.7
Killer whale	*Orcinus orca*[5]	ENP Offshore	X	X	X		-; N	240 (0.49; 162; 2014)	1.6	0
		West Coast Transient[8]	X	X			-; N	243 (n/a; 2009)	2.4	0
		AT1 Transient		X			D; Y	7 (n/a; 2016)	0	0
		ENP Gulf of Alaska, Aleutian Islands, and Bering Sea Transient		X	X	X	-; N	587 (n/a; 2012)	5.9	1
		ENP Southern Resident	X				E/D; Y	83 (n/a; 2016)	0.14	0
		ENP Northern Resident	X	X			-; N	261 (n/a; 2011)	1.96	0
		ENP Alaska Resident		X	X		-; N	2,347 (n/a; 2012)	24	1
Short-finned pilot whale	*Globicephala macrorhynchus*	CA/OR/WA	X				-; N	836 (0.79; 466; 2014)	4.5	1.2
Family Phocoenidae (porpoises)										
Harbor porpoise	*Phocoena phocoena vomerina*	Morro Bay	X				-; N	2,917 (0.41; 2,102; 2012)	21	≥0.6
		Monterey Bay	X				-; N	3,715 (0.51; 2,480; 2011)	25	0
		San Francisco-Russian River	X				-; N	9,886 (0.51; 6,625; 2011)	66	0
		Northern CA/Southern OR	X				-; N	35,769 (0.52; 23,749; 2011)	475	≥0.6
		Northern OR/WA Coast	X				-; N	21,487 (0.44; 15,123; 2011)	151	≥3
		Washington	X				-; N	11,233	66	≥7.2

		Inland Waters						(0.37; 8,308; 2015)		
		Southeast Alaska*		X			-; Y	Unknown	n/a	34
		Gulf of Alaska[9]		X			-; Y	31,046 (0.214; 25,987; 1998)	n/a	72
		Bering Sea[9]			X	X	-; Y	48,215 (0.223; 40,039; 1999)	n/a	0.4
Dall's porpoise	*Phocoenoides dalli dalli*	CA/OR/WA	X				-; N	25,750 (0.45; 17,954; 2014)	172	0.3
		Alaska[9]		X	X		-; N	83,400 (0.097; n/a; 1993)	n/a	38
Order Carnivora – Superfamily Pinnipedia										
Family Otariidae (eared seals and sea lions)										
Guadalupe fur seal	*Arctocephalus philippii townsendi*	Mexico to California	X				T/D; Y	20,000 (n/a; 15,830; 2010)	542	≥3.2[12]
Northern fur seal	*Callorhinus ursinus*	Pribilof Islands/Eastern Pacific	X	X	X		D; Y	637,561 (0.2; 539,638; 2015)	11,602	436
		California	X	X			-; N	14,050 (n/a; 7,524; 2013)	451	1.8
California sea lion	*Zalophus californianus*	United States	X				-; N	296,750 (n/a; 153,337; 2011)	9,200	389
Steller sea lion	*Eumetopias jubatus monteriensis*	Eastern U.S.	X	X			-; N	41,638 (n/a; 2015)	2,498	108
	E. j. jubatus	Western U.S.		X	X		E/D; Y	53,303 (n/a; 2016)	320	241
Family Phocidae (earless seals)										
Bearded seal	*Erignathus barbatus nauticus*	Alaska (Beringia DPS)*			X	X	T/D; Y	273,676*	8,210*	391
Harbor seal	*Phoca vitulina richardii*	California	X				-; N	30,968 (n/a; 27,348; 2012)	1,641	43
		OR/WA Coast[9]	X				-; N	24,732 (0.12; 22,380; 1999)	n/a	10.6
		Washington Northern Inland Waters[9]	X				-; N	11,036 (0.15; 7,213; 1999)	n/a	9.8
		Southern Puget Sound[9]	X				-; N	1,568 (0.15; 1,025; 1999)	n/a	3.4
		Hood Canal[9]	X				-; N	1,088 (0.15; 711; 1999)	n/a	0.2
		Clarence Strait[10]		X			-; N	31,634	1,222	41

								(4,518; 29,093; 2011)		
		Dixon/Cape Decision[10]		X			-; N	18,105 (1,614; 16,727; 2011)	703	69
		Sitka/Chatham Strait[10]		X			-; N	14,855 (2,106; 13,212; 2011)	555	77
		Lynn Canal/ Stephens Passage[10]		X			-; N	9,478 (1,467; 8,605; 2011)	155	50
		Glacier Bay/Icy Strait[10]		X			-; N	7,210 (1,866; 5,647; 2011)	169	104
		Cook Inlet/ Shelikof Strait[10]		X			-; N	27,386 (3,328; 25,651; 2011)	770	234
		Prince William Sound[10]		X			-; N	29,889 (13,846; 27,936; 2011)	838	279
		South Kodiak[10]		X			-; N	19,199 (2,429; 17,479; 2011)	314	128
		North Kodiak[10]		X			-; N	8,321 (1,619; 7,096; 2011)	298	37
		Bristol Bay[10]			X		-; N	32,350 (6,882; 28,146; 2011)	1,182	142
		Pribilof Islands[10]			X		-; N	232 (n/a; 2010)	7	0
		Aleutian Islands[10]			X		-; N	6,431 (882; 5,772; 2011)	173	90
Spotted seal	*P. largha*	Alaska			X	X	-; N	461,625 (n/a; 423,237; 2013)	12,697	329
Ringed seal	*Pusa hispida hispida*	Alaska*			X	X	T/D; N	Unknown	n/a	1,054
Ribbon seal	*Histriophoca fasciata*	Alaska			X	X	-; N	184,000 (n/a; 163,086; 2013)	9,785	3.8
Northern elephant seal	*Mirounga angustirostris*	California Breeding	X	X	X		-; N	179,000 (n/a; 81,368; 2010)	4,882	8.8

*Stocks marked with an asterisk are addressed in further detail in text below.

[1]WC: west coast (including Puget Sound); GOA: Gulf of Alaska; BSAI: Bering Sea/Aleutian Islands; CSBS: Chukchi Sea/Beaufort Sea

[2]Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3]NMFS marine mammal stock assessment reports at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For most stocks of killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[4]These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the 2016 SARs (Carretta *et al.*, 2017; Muto *et al.*, 2017).

[5]Transient and resident killer whales are considered unnamed subspecies (Committee on Taxonomy, 2017).

[6]No information is available to estimate the population size of dwarf sperm whales off the U.S. west coast, as no sightings of this species have been documented despite numerous vessel surveys of this region (Carretta *et al.*, 2017). Dwarf and pygmy sperm whales are difficult to differentiate at sea but, based on previous sighting surveys and historical stranding data, it is thought that recent ship survey sightings were of pygmy sperm whales.

[7]The six species of Mesoplodont beaked whales occurring in the CA/OR/WA region are managed as a single stock due to the rarity of records and the difficulty in distinguishing these animals to species in the field. Based on bycatch and stranding records, it appears that *M. carlhubbsi* is the most commonly encountered of these species (Carretta *et al.*, 2008; Moore and Barlow, 2013).

[8]The abundance estimate for this stock includes only animals from the "inner coast" population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the "outer coast" subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[9]Abundance estimates for these stocks are not considered current. PBR is therefore considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document. For some stocks of beluga whale, PBR is calculated despite a lack of current recent survey data. For the Beaufort Sea stock, recent trend data suggest that the stock is at least as large as it was when the minimum abundance was last estimated; therefore, it is acceptable to use the information to calculate PBR. Similarly, the Bristol Bay stock of beluga whales is known to be increasing, and the available abundance information may be used to calculate a PBR value. Despite current abundance information for the Cook Inlet stock of beluga whales, a PBR cannot be calculated because the stock does not meet the assumptions inherent to the use of the PBR equation, *i.e.*, despite low abundance relative to historical estimates and low known levels of human-caused mortality since 1999, the stock is not increasing (for unknown reasons).

[10]For harbor seal stocks in Alaska, abundance estimates are based on aerial survey data with survey counts adjusted to account for the influence of external conditions (*e.g.*, tide, time of day, day of year) on the number of seals hauled out on shore, and counted, during the surveys. Corrections are also made to account for the proportion of seals in the water and not counted. The minimum population estimate is calculated as the lower bound of the 80 percent credible interval obtained from the posterior distribution of abundance estimates. For these stocks, an estimate of standard error associated with the abundance estimate is provided rather than CV. For the Pribilof Islands stock, the abundance estimate represents a complete count of individuals in the stock.

[11]These stocks are known to spend a portion of their time outside the U.S. EEZ. Therefore, the PBR presented here is the allocation for U.S. waters only and is a portion of the total. The total PBR for blue whales is 9.3 (one-quarter allocation for U.S. waters), and the total for CA/OR/WA humpback whales is 22 (one half allocation for U.S. waters). Annual M/SI presented for these species is for U.S. waters only.

[12]This represents annual M/SI in U.S. waters. However, the vast majority of M/SI for this stock—the level of which is unknown—would likely occur in Mexican waters.

BILLING CODE 3510–22–C

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.*,

2015), NMFS established 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 3. Because MMPA stocks cannot be portioned, *i.e.,* parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes (*e.g.,* selection of a recovery factor, stock status).

Within Alaska and U.S. west coast waters, four current DPSs may occur: The Western North Pacific (WNP) DPS (endangered), Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). According to Wade *et al.* (2016), in the Aleutian Islands and Bering, Chukchi, and Beaufort Seas, encountered whales are most likely to be from the Hawaii DPS (86.5 percent), but could be from the Mexico DPS (11.3 percent) or WNP DPS (4.4 percent). The same pattern holds in the Gulf of Alaska, with the probability of encountering whales from these same DPSs expected to be 89 percent, 10.5 percent, and 0.5 percent, respectively, and in southeast Alaska (93.9 percent from Hawaii DPS and 6.1 percent from Mexico DPS). Off of Washington, whales remain most likely to be from the Hawaii DPS (52.9 percent), but are almost equally likely to be from the Mexico DPS (41.9 percent), and could also be from the Central America DPS (14.7 percent). Off of Oregon and California, whales are most likely to be from the Mexico DPS (89.6 percent), with a 19.7 percent probability of an encountered whale being from the Central America DPS. Note that these probabilities reflect the upper limit of the 95 percent confidence interval of the probability of occurrence; therefore, numbers may not sum to 100 percent for a given area.

Although no comprehensive abundance estimate is available for the Alaska stock of minke whales, recent surveys provide estimates for portions of the stock's range. A 2010 survey conducted on the eastern Bering Sea shelf produced a provisional abundance estimate of 2,020 (CV = 0.73) whales (Friday *et al.,* 2013). This estimate is considered provisional because it has not been corrected for animals missed on the trackline, animals submerged when the ship passed, or responsive movement. Additionally, line-transect surveys were conducted in shelf and nearshore waters (within 30–45 nautical miles of land) in 2001–2003 between the Kenai Peninsula (150° W) and Amchitka Pass (178° W). Minke whale abundance was estimated to be 1,233 (CV = 0.34) for this area (also not been corrected for animals missed on the trackline) (Zerbini *et al.,* 2006). The majority of the sightings were in the Aleutian Islands, rather than in the Gulf of Alaska, and in water shallower than 200 m. These estimates cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed. Similarly, although a comprehensive abundance estimate is not available for the northeast Pacific stock of fin whales, provisional estimates representing portions of the range are available. The same 2010 survey of the eastern Bearing sea shelf provided an estimate of 1,061 (CV = 0.38) fin whales (Friday *et al.,* 2013). The estimate is not corrected for missed animals, but is expected to be robust as previous studies have shown that only small correction factors are needed for fin whales (Barlow, 1995). Zerbini *et al.* (2006) produced an estimate of 1,652 (95% CI: 1,142–2,389) fin whales for the area described above.

Current and historical estimates of the abundance of sperm whales in the North Pacific are considered unreliable, and caution should be exercised in interpreting published estimates (Muto *et al.,* 2017). However, Kato and Miyashita (1998) produced an abundance estimate of 102,112 (CV = 0.155) sperm whales in the western North Pacific (believed to be positively biased). The number of sperm whales occurring within Alaska waters is unknown.

Using 2010–2012 survey data for the inland waters of southeast Alaska, Dahlheim *et al.* (2015) calculated a combined abundance estimate for harbor porpoise in the northern (including Cross Sound, Icy Strait, Glacier Bay, Lynn Canal, Stephens Passage, and Chatham Strait) and southern (including Frederick Sound, Sumner Strait, Wrangell and Zarembo Islands, and Clarence Strait as far south as Ketchikan) regions of the inland waters of 975 (CV = 0.1). Because this abundance estimate has not been corrected for detection biases, which are expected to be high for harbor porpoise, the estimate is likely conservative (Muto *et al.,* 2017). However, this estimate may be used to calculate a minimum abundance estimate of 896 harbor porpoise for the area, with a corresponding PBR value of 8.9.

No estimate of population abundance is available for the entire Alaska stock of bearded seals (note that this stock corresponds with the Beringia DPS designated pursuant to the ESA and listed as threatened). However, during 2012–2013, U.S. and Russian researchers conducted aerial abundance and distribution surveys over the entire Bering Sea and Sea of Okhotsk (Moreland *et al.* 2013). A sub-sample of data from the U.S. portion of the Bering Sea were analyzed by Conn *et al.* (2014) to produce an abundance estimate of approximately 299,174 (95% CI: 245,476–360,544) bearded seals in U.S. waters. However, this estimate does not include seals that were in the Chukchi and Beaufort seas at the time of the surveys and therefore must be considered an underestimate. Using this estimate, a minimum abundance of 273,676 seals in the U.S. sector of the Bering Sea (and associated PBR of 8,210) was calculated.

Most taxonomists recognize five subspecies of ringed seals. The Arctic ringed seal subspecies occurs in the Arctic Ocean and Bering Sea and is the only stock that occurs in U.S. waters (referred to as the Alaska stock). NMFS listed the Arctic ringed seal subspecies as threatened under the ESA on December 28, 2012 (77 FR 76706), primarily due to anticipated loss of sea ice through the end of the 21st century due to ongoing climate change. On March 11, 2016, the U.S. District Court for the District of Alaska issued a memorandum decision in a lawsuit challenging the listing of ringed seals under the ESA (*Alaska Oil and Gas Association, et al.* v. *National Marine Fisheries Service, et al.,* Case No. 4:14–cv–00029–RRB). The decision vacated NMFS's listing of the Arctic subspecies of ringed seals as a threatened species. NMFS appealed that decision and on February 12, 2018, the Ninth Circuit U.S. Court of Appeals upheld the decision to list the ringed seal as threatened. The decision was affirmed and the listing reinstated on May 15, 2018.

A comprehensive and reliable abundance estimate for the Alaska stock of ringed seals is not available. However, using data from surveys in the late 1990s and 2000 (Bengtson *et al.,* 2005; Frost *et al.,* 2004), Kelly *et al.* (2010) estimated the total population in the Alaska Chukchi and Beaufort seas to be at least 300,000 ringed seals. This is likely an underestimate since surveys in the Beaufort Sea were limited to within 40 km from shore (Muto *et al.,* 2017). Using the same survey data described above for bearded seals, Conn *et al.* (2014) calculated an abundance estimate of about 170,000 ringed seals for the U.S. portion of the Bering Sea. This

estimate did not account for availability bias and did not include ringed seals in the shorefast ice zone, which were surveyed using a different method. Thus, the actual number of ringed seals in the U.S. sector of the Bering Sea is likely much higher, perhaps by a factor of two or more (Muto *et al.,* 2017).

Take Reduction Planning—Take reduction plans are designed to help recover and prevent the depletion of strategic marine mammal stocks that interact with certain U.S. commercial fisheries, as required by Section 118 of the MMPA. The immediate goal of a take reduction plan is to reduce, within six months of its implementation, the M/SI of marine mammals incidental to commercial fishing to less than the PBR level. The long-term goal is to reduce, within five years of its implementation, the M/SI of marine mammals incidental to commercial fishing to insignificant levels, approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Take reduction teams are convened to develop these plans.

There are no take reduction plans currently in effect for Alaskan fisheries. For marine mammals off the U.S. west coast, there is currently one take reduction plan in effect (Pacific Offshore Cetacean Take Reduction Plan). The goal of this plan is to reduce M/SI of several marine mammal stocks incidental to the California thresher shark/swordfish drift gillnet fishery (CA DGN). A team was convened in 1996 and a final plan produced in 1997 (62 FR 51805; October 3, 1997). Marine mammal stocks of concern initially included the California, Oregon, and Washington stocks for beaked whales, short-finned pilot whales, pygmy sperm whales, sperm whales, and humpback whales. The most recent five-year averages of M/SI for these stocks are below PBR. More information is available online at: *www.nmfs.noaa.gov/pr/interactions/trt/poctrp.htm.* Of the stocks of concern, the AFSC has requested the authorization of incidental M/SI for the short-finned pilot whale only (on behalf of IPHC; see ''Estimated Take'' later in this document). The most recent reported average annual human-caused mortality for short-finned pilot whales (2010–14) is 1.2 animals. The IPHC does not use drift gillnets in its fisheries research program; therefore, take reduction measures applicable to the CA DGN fisheries are not relevant.

Unusual Mortality Events (UME)—A UME is defined under the MMPA as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.'' From 1991 to the present, there have been 19 formally recognized UMEs on the U.S. west coast or in Alaska involving species under NMFS' jurisdiction. The only currently ongoing investigations involve Guadalupe fur seals and California sea lions along the west coast. Increased strandings of Guadalupe fur seals (up to eight times the historical average) have occurred along the entire coast of California. These increased strandings were reported beginning in January 2015 and peaked from April through June 2015, but have remained well above average through 2017. Findings from the majority of stranded animals include malnutrition with secondary bacterial and parasitic infections. Beginning in January 2013, elevated strandings of California sea lion pups were observed in southern California, with live sea lion strandings nearly three times higher than the historical average. Findings to date indicate that a likely contributor to the large number of stranded, malnourished pups was a change in the availability of sea lion prey for nursing mothers, especially sardines. These UMEs are occurring in the same areas and the causes and mechanisms of this remain under investigation (*www.nmfs.noaa.gov/pr/health/mmume/guadalupefurseals2015.html; www.nmfs.noaa.gov/pr/health/mmume/californiasealions2013.htm;* accessed November 24, 2017).

Another recent, notable UME involved large whales and occurred in the western Gulf of Alaska and off of British Columbia, Canada. Beginning in May 2015, elevated large whale mortalities (primarily fin and humpback whales) occurred in the areas around Kodiak Island, Afognak Island, Chirikof Island, the Semidi Islands, and the southern shoreline of the Alaska Peninsula. Although most carcasses have been non-retrievable as they were discovered floating and in a state of moderate to severe decomposition, the UME is likely attributable to ecological factors, *i.e.,* the 2015 El Niño, ''warm water blob,'' and the Pacific Coast domoic acid bloom. While the UME remains under investigation at the time of this writing, the dates of the UME are considered to be from May 22, through December 31, 2015 (western Gulf of Alaska) and from April 23, 2015 through April 16, 2016 (British Columbia). More information is available online at *www.nmfs.noaa.gov/pr/health/mmume/large_whales_2015.html.*

Additional UMEs in the past ten years include those involving ringed, ribbon, spotted, and bearded seals (collectively ''ice seals'') (2011; disease); harbor porpoises in California (2008; cause determined to be ecological factors); Guadalupe fur seals in the Northwest (2007; undetermined); large whales in California (2007; human interaction); cetaceans in California (2007; undetermined); and harbor porpoises in the Pacific Northwest (2006; undetermined). For more information on UMEs, please visit: *www.nmfs.noaa.gov/pr/health/mmume/events.html.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with an exception for lower limits for low-frequency cetaceans where the result was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz, with best hearing estimated to be from 100 Hz to 8 kHz;

• Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz;

• High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* including two members of the genus *Lagenorhynchus,* on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz;

• Pinnipeds in water; Phocidae (true seals): Functional hearing is estimated to occur between approximately 50 Hz to 86 kHz, with best hearing between 1–50 kHz;

• Pinnipeds in water; Otariidae (eared seals): Functional hearing is estimated to occur between 60 Hz and 39 kHz for Otariidae, with best hearing between 2–48 kHz.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Forty marine mammal species (30 cetacean and ten pinniped (four otariid and six phocid) species) have the potential to co-occur with AFSC and IPHC research activities. Please refer to Table 3. Of the 30 cetacean species that may be present, eight are classified as low-frequency cetaceans (*i.e.,* all mysticete species), eighteen are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and four are classified as high-frequency cetaceans (*i.e.,* porpoises and *Kogia* spp.).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.,* gear deployment, use of active acoustic sources, visual disturbance) may impact marine mammals and their habitat. The ''Estimated Take'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section considers the content of this section and the material it references, the ''Estimated Take'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. In the following discussion, we consider potential effects to marine mammals from ship strike, physical interaction with the gear types described previously, use of active acoustic sources, and visual disturbance of pinnipeds.

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales, which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans or pinnipeds are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below fifty percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

In an effort to reduce the number and severity of strikes of the endangered North Atlantic right whale (*Eubalaena glacialis*), NMFS implemented speed restrictions in 2008 (73 FR 60173; October 10, 2008). These restrictions require that vessels greater than or equal to 65 ft (19.8 m) in length travel at less than or equal to 10 kn near key port entrances and in certain areas of right whale aggregation along the U.S. eastern seaboard. Conn and Silber (2013) estimated that these restrictions reduced total ship strike mortality risk levels by 80 to 90 percent.

For vessels used in AFSC research activities, transit speeds average 10 kn (but vary from 6–14 kn), while vessel speed during active sampling with towed gear is typically only 2–4 kn. At sampling speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again unlikely. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is research activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). Commercial fishing vessels were responsible for three percent of recorded collisions, while only one such incident (0.75 percent) was reported for a research vessel during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. The strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = $0–5.5 \times 10^{-6}$; NMFS, 2013). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller

cetaceans or pinnipeds to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of vessels associated with research surveys striking a marine mammal are low, we require a robust ship strike avoidance protocol (see ''Proposed Mitigation''), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving AFSC research vessels, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. No ship strikes have been reported from any fisheries research activities conducted or funded by the AFSC. Given the relatively slow speeds of research vessels, the presence of bridge crew watching for obstacles at all times (including marine mammals), the presence of marine mammal observers on some surveys, and the small number of research cruises relative to commercial ship traffic, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of research will not be discussed further in the following analysis.

Research Gear

The types of research gear used by AFSC were described previously under ''Detailed Description of Activity.'' Here, we broadly categorize these gears into those whose use we consider to have an extremely unlikely potential to result in marine mammal interaction and those whose use we believe may result in marine mammal interaction. Gears in the former category are not considered further, while those in the latter category are carried forward for further analysis. Gears with likely potential for marine mammal interaction include trawls, longlines, and gillnets.

Trawl nets, longlines, and gillnets deployed by AFSC are similar to gear used in various commercial fisheries, and the potential for and history of marine mammal interaction with these gears through physical contact (*i.e.,* capture or entanglement) is well-documented. Read *et al.* (2006) estimated marine mammal bycatch in U.S. fisheries from 1990–99 and derived an estimate of global marine mammal bycatch by expanding U.S. bycatch estimates using data on fleet composition from the United Nations Food and Agriculture Organization (FAO). Although most U.S. bycatch for both cetaceans (84 percent) and pinnipeds (98 percent) occurred in gillnets, global marine mammal bycatch in trawl nets and longlines is likely substantial given that total global bycatch is thought to number in the hundreds of thousands of individuals (Read *et al.,* 2006). In addition, global bycatch via longline has likely increased, as longlines have become the most common method of capturing swordfish and tuna since the U.N. banned the use of high seas driftnets over 2.5 km long in 1991 (high seas driftnets were previously often 40–60 km long) (Read, 2008; FAO, 2001).

Marine mammals are widely regarded as being quite intelligent and inquisitive, and when their pursuit of prey coincides with human pursuit of the same resources, it should be expected that physical interaction with fishing gear may occur (*e.g.,* Beverton, 1985). Fishermen and marine mammals are both drawn to areas of high prey density, and certain fishing activities may further attract marine mammals by providing food (*e.g.,* bait, captured fish, bycatch discards) or by otherwise making it easier for animals to feed on a concentrated food source. Provision of foraging opportunities near the surface may present an advantage by negating the need for energetically expensive deep foraging dives (Hamer and Goldsworthy, 2006). Trawling, for example, can make available previously unexploited food resources by gathering prey that may otherwise be too fast or deep for normal predation, or may concentrate calories in an otherwise patchy landscape (Fertl and Leatherwood, 1997). Pilot whales, which are generally considered to be teuthophagous (*i.e.,* feeding primarily on squid), were commonly observed in association with Atlantic mackerel (*Scomber scombrus*) trawl fisheries from 1977–88 in the northeast U.S. EEZ (Waring *et al.,* 1990). Not surprisingly, stomach contents of captured whales were observed to have high proportions of mackerel (68 percent of non-trace food items), indicating that the ready availability of a novel, concentrated, high-calorie prey item resulted in changed dietary composition (Read, 1994).

These interactions can result in injury or death for the animal(s) involved and/or damage to fishing gear. Coastal animals, including various pinnipeds, bottlenose dolphins, and harbor porpoises, are perhaps the most vulnerable to these interactions and set or passive fishing gear (*e.g.,* gillnets, traps) the most likely to be interacted with (*e.g.,* Beverton, 1985; Barlow *et al.,* 1994; Read *et al.,* 2006; Byrd *et al.,* 2014; Lewison *et al.,* 2014). Although interactions are less common for use of trawl nets and longlines, they do occur with sufficient frequency to necessitate the establishment of required mitigation measures for multiple U.S. fisheries using both types of gear (NMFS, 2017). It is likely that no species of marine mammal can be definitively excluded from the potential for interaction with fishing gear (*e.g.,* Northridge, 1984); however, the extent of interactions is likely dependent on the biology, ecology, and behavior of the species involved and the type, location, and nature of the fishery.

Trawl Nets—As described previously, trawl nets are towed nets (*i.e.,* active fishing) consisting of a cone-shaped net with a codend or bag for collecting the fish and can be designed to fish at the bottom, surface, or any other depth in the water column. Here we refer to bottom trawls and pelagic trawls (midwater or surface, *i.e.,* any net not designed to tend the bottom while fishing). Trawl nets in general have the potential to capture or entangle marine mammals, which have been known to be caught in bottom trawls, presumably when feeding on fish caught therein, and in pelagic trawls, which may or may not be coincident with their feeding (Northridge, 1984).

Capture or entanglement may occur whenever marine mammals are swimming near the gear, intentionally (*e.g.,* foraging) or unintentionally (*e.g.,* migrating), and any animal captured in a net is at significant risk of drowning unless quickly freed. Animals can also be captured or entangled in netting or tow lines (also called lazy lines) other than the main body of the net; animals may become entangled around the head, body, flukes, pectoral fins, or dorsal fin. Interaction that does not result in the immediate death of the animal by drowning can cause injury (*i.e.,* Level A harassment) or serious injury. Constricting lines wrapped around the animal can immobilize the animal or injure by cutting into or through blubber, muscles and bone (*i.e.,* penetrating injuries) or constricting blood flow to or severing appendages. Immobilization of the animal, if it does not result in immediate drowning, can cause internal injuries from prolonged stress and/or severe struggling and/or impede the animal's ability to feed

(resulting in starvation or reduced fitness) (Andersen *et al.,* 2008).

Marine mammal interactions with trawl nets, through capture or entanglement, are well-documented. Dolphins are known to attend operating nets in order to either benefit from disturbance of the bottom or to prey on discards or fish within the net. For example, Leatherwood (1975) reported that the most frequently observed feeding pattern for bottlenose dolphins in the Gulf of Mexico involved herds following working shrimp trawlers, apparently feeding on organisms stirred up from the benthos. Bearzi and di Sciara (1997) opportunistically investigated working trawlers in the Adriatic Sea from 1990–94 and found that ten percent were accompanied by foraging bottlenose dolphins. However, pelagic trawls have greater potential to capture cetaceans, because the nets may be towed at faster speeds, these trawls are more likely to target species that are important prey for marine mammals (*e.g.,* squid, mackerel), and the likelihood of working in deeper waters means that a more diverse assemblage of species could potentially be present (Hall *et al.,* 2000).

Globally, at least 17 cetacean species are known to feed in association with trawlers and individuals of at least 25 species are documented to have been killed by trawl nets, including several large whales, porpoises, and a variety of delphinids (Perez, 2006; Young and Iudicello, 2007; Karpouzli and Leaper, 2004; Hall *et al.,* 2000; Fertl and Leatherwood, 1997; Northridge, 1991; Song *et al.,* 2010). At least eighteen species of seals and sea lions are known to have been killed in trawl nets (Wickens, 1995; Perez, 2006; Zeeberg *et al.,* 2006). Generally, direct interaction between trawl nets and marine mammals (both cetaceans and pinnipeds) has been recorded wherever trawling and animals co-occur. A lack of recorded interactions where animals are known to be present may indicate simply that trawling is absent or an insignificant component of fisheries in that region or that interactions were not observed, recorded, or reported.

In evaluating risk relative to a specific fishery (or comparable research survey), one must consider the size of the net as well as frequency, timing, and location of deployment. These considerations inform determinations of whether interaction with marine mammals is likely. Of the net types described previously under ''Trawl Nets,'' AFSC has recorded marine mammal interactions with the Cantrawl surface trawl net but also has one recorded interaction with a bottom trawl. Other midwater trawl nets, such as the Nordic 264 and Cobb trawl, have demonstrated potential for marine mammal interaction based on interaction records from other NMFS science centers.

Longlines—Longlines are basically strings of baited hooks that are either anchored to the bottom, for targeting groundfish, or are free-floating, for targeting pelagic species and represent a passive fishing technique (the latter not used by AFSC). Any longline generally consists of a mainline from which leader lines (gangions) with baited hooks branch off at a specified interval, and is left to passively fish, or soak, for a set period of time before the vessel returns to retrieve the gear. Longlines are marked by two or more floats that act as visual markers and may also carry radio beacons; aids to detection are of particular importance for pelagic longlines, which may drift a significant distance from the deployment location. Bottom longlines may be of monofilament or multifilament natural or synthetic lines.

Marine mammals may be hooked or entangled in longline gear, with interactions potentially resulting in death due to drowning, strangulation, severing of carotid arteries or the esophagus, infection, an inability to evade predators, or starvation due to an inability to catch prey (Hofmeyr *et al.,* 2002), although it is more likely that animals will survive being hooked if they are able to reach the surface to breathe. Injuries, which may include serious injury, include lacerations and puncture wounds. Animals may attempt to depredate either bait or catch, with subsequent hooking, or may become accidentally entangled. As described for trawls, entanglement can lead to constricting lines wrapped around the animals and/or immobilization, and even if entangling materials are removed the wounds caused may continue to weaken the animal or allow further infection (Hofmeyr *et al.,* 2002). Large whales may become entangled in a longline and then break free with a portion of gear trailing, resulting in alteration of swimming energetics due to drag and ultimate loss of fitness and potential mortality (Andersen *et al.,* 2008). Weight of the gear can cause entangling lines to further constrict and further injure the animal. Hooking injuries and ingested gear are most common in small cetaceans and pinnipeds, but have been observed in large cetaceans (*e.g.,* sperm whales). The severity of the injury depends on the species, whether ingested gear includes hooks, whether the gear works its way into the gastrointestinal (GI) tract, whether the gear penetrates the GI lining, and the location of the hooking (*e.g.,* embedded in the animal's stomach or other internal body parts) (Andersen *et al.,* 2008). Bottom longlines pose less of a threat to marine mammals due to their deployment on the ocean bottom but can still result in entanglement in buoy lines or hooking as the line is either deployed or retrieved. The rate of interaction between longline fisheries and marine mammals depends on the degree of overlap between longline effort and species distribution, hook style and size, type of bait and target catch, and fishing practices (such as setting/hauling during the day or at night).

As was noted for trawl nets, many species of cetaceans and pinnipeds are documented to have been killed by longlines, including several large whales, porpoises, a variety of delphinids, seals, and sea lions (Perez, 2006; Young and Iudicello, 2007; Northridge, 1984, 1991; Wickens, 1995). Generally, direct interaction between longlines and marine mammals (both cetaceans and pinnipeds) has been recorded wherever longline fishing and animals co-occur. A lack of recorded interactions where animals are known to be present may indicate simply that longlining is absent or an insignificant component of fisheries in that region or that interactions were not observed, recorded, or reported.

In evaluating risk relative to a specific fishery (or research survey), one must consider the length of the line and number of hooks deployed as well as frequency, timing, and location of deployment. These considerations inform determinations of whether interaction with marine mammals is likely. AFSC has not recorded marine mammal interactions with any longline survey, while the IPHC has recorded five interactions (all pinnipeds) from 1999–2016. While a lack of historical interactions does not in and of itself indicate that future interactions are unlikely, we believe that the historical record, considered in context with the frequency and timing of these activities, as well as mitigation measures employed indicate that future marine mammal interactions with these gears would be uncommon.

Gillnets—Marine mammal interactions with gillnets are well-documented, with a large proportion of species of all types of marine mammals (*e.g.,* mysticetes, odontocetes, pinnipeds) recorded as gillnet bycatch (Reeves *et al.,* 2013; Lewison *et al.,* 2014; Zollett, 2009). Reeves *et al.* (2013) note that numbers of marine mammals killed in gillnets tend to be greatest for species that are widely distributed in

coastal and shelf waters. Because of the well-documented risk to marine mammals, and to coastally distributed pinnipeds and small cetaceans in particular, we believe there is some risk of interaction inherent to AFSC use of gillnets, as described below in ''Estimated Take.'' However, this risk is limited by AFSC's minimal use of gillnets, primarily at the Little Port Walter in southeast Alaska (see Table 1–1 of AFSC's application), and by use of pingers on gillnets as a deterrent (see ''Proposed Mitigation'').

The AFSC also uses some traps and pots, both of which are passive fishing gear that have limited species selectivity and may be set for long durations (FAO, 2001). Thus, these gears have the potential to capture non-targeted fauna that use the same habitat as targeted species, even without the use of bait. Mortality in fyke nets can arise from stress and injury associated with anoxia, abrasion, confinement, and starvation (Larocque, 2011). In 2010, NMFS Northeast Fisheries Science Center captured a harbor seal in a fyke trap. However, AFSC fyke traps are used in freshwater habitats with only limited deployments. Other traps and pots are likewise used in only very limited fashion, with some traps deployed without bait. Therefore, we do not believe that there is a reasonable potential for marine mammal interaction with fyke traps or pots used by the AFSC, and these gears are not considered further in this document.

Other research gear—The only AFSC research gears with any record of marine mammal interactions are trawl nets, while IPHC has recorded marine mammal interactions with longlines. Because of ample evidence from commercial fishing operations, we assume that there is also risk of marine mammal interaction due to AFSC use of gillnets. All other gears used in AFSC fisheries research (*e.g.,* a variety of plankton nets, CTDs, remotely operated vehicles (ROVs)) do not have the expected potential for marine mammal interactions and are not known to have been involved in any marine mammal interaction anywhere. Specifically, we consider CTDs, ROVs, small surface trawls, plankton nets, other small nets, camera traps, dredges, and vertically deployed or towed imaging systems to be no-impact gear types.

Unlike trawl nets, seine nets, and longline gear, which are used in both scientific research and commercial fishing applications, these other gears are not considered similar or analogous to any commercial fishing gear and are not designed to capture any commercially salable species, or to collect any sort of sample in large quantities. They are not considered to have the potential to take marine mammals primarily because of their design or how they are deployed. For example, CTDs are typically deployed in a vertical cast on a cable and have no loose lines or other entanglement hazards. A Bongo net is typically deployed on a cable, whereas neuston nets (these may be plankton nets or small trawls) are often deployed in the upper one meter of the water column; either net type has very small size (*e.g.,* two bongo nets of 0.5 m^2 each or a neuston net of approximately 2 m^2) and no trailing lines to present an entanglement risk. These other gear types are not considered further in this document.

Acoustic Effects

We previously provided general background information on sound and the specific sources used by the AFSC (see ''Description of Active Acoustic Sound Sources''), as well as background information on marine mammal hearing (see ''Description of Marine Mammals in the Area of the Specified Activity''). Here, we discuss the potential effects of AFSC use of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound—Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to AFSC's use of active acoustic sources (*e.g.,* echosounders).

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that AFSC use of active acoustic sources may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997).

Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007). AFSC activities do not involve the use of devices such as explosives or mid-frequency active sonar that are associated with these types of effects.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a ''stranding'' (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.,* Geraci *et al.,* 1999). However, the cause or causes of most strandings are unknown (*e.g.,* Best, 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.,* Sih *et al.,* 2004). For further description of stranding events see, *e.g.,* Southall *et al.,* 2006; Jepson *et al.,* 2013; Wright *et al.,* 2013.

1. *Temporary Threshold Shift*—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises; and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted and ringed seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016).

2. *Behavioral Effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran

et al., 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach low-frequency seismic airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species hearing sensitivitiy.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging), or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-

day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

3. *Stress Responses*—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

4. *Auditory Masking*—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial

shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects of AFSC Activity—As described previously (see ''Description of Active Acoustic Sound Sources''), the AFSC proposes to use various active acoustic sources, including echosounders (*e.g.,* multibeam systems), scientific sonar systems, positional sonars (*e.g.,* net sounders for determining trawl position), and environmental sensors (*e.g.,* current profilers). These acoustic sources, which are present on most AFSC fishery research vessels, include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers.

Many typically investigated acoustic sources (*e.g.,* seismic airguns, low- and mid-frequency active sonar used for military purposes, pile driving, vessel noise)—sources for which certain of the potential acoustic effects described above have been observed or inferred—produce signals that are either much lower frequency and/or higher total energy (considering output sound levels and signal duration) than the high-frequency mapping and fish-finding systems used by the AFSC. There has been relatively little attention given to the potential impacts of high-frequency sonar systems on marine life, largely because their combination of high output frequency and relatively low output power means that such systems are less likely to impact many marine species. However, some marine mammals do hear and produce sounds within the frequency range used by these sources and ambient noise is much lower at high frequencies, increasing the probability of signal detection relative to other sounds in the environment.

As noted above, relatively high levels of sound are likely required to cause TTS in most pinnipeds and odontocete cetaceans. While dependent on sound exposure frequency, level, and duration, existing studies indicate that for the kinds of relatively brief exposures potentially associated with transient sounds such as those produced by the active acoustic sources used by the AFSC, SPLs in the range of approximately 180–220 dB rms might be required to induce onset TTS levels for most species (Southall *et al.,* 2007). However, it should be noted that there may be increased sensitivity to TTS for certain species generally (harbor porpoise; Lucke *et al.,* 2009) or specifically at higher sound exposure frequencies, which correspond to a species' best hearing range (20 kHz vs. 3 kHz for bottlenose dolphins; Finneran and Schlundt, 2010). However, for these animals, which are better able to hear higher frequencies and may be more sensitive to higher frequencies, exposures on the order of approximately 170 dB rms or higher for brief transient signals are likely required for even temporary (recoverable) changes in hearing sensitivity that would likely not be categorized as physiologically damaging (Lucke *et al.,* 2009). The corresponding estimates for PTS would be at very high received levels that would rarely be experienced in practice.

Based on discussion provided by Southall *et al.* (2007), Lurton and DeRuiter (2011) modeled the potential impacts of conventional echosounders on marine mammals, estimating PTS onset at typical distances of 10–100 m for the kinds of sources considered here. Kremser *et al.* (2005) modeled the potential for TTS in blue, sperm, and beaked whales (please see Kremser *et al.* (2005) for discussion of assumptions regarding TTS onset in these species) from a multibeam echosounder, finding similarly that TTS would likely only occur at very close ranges to the hull of the vessel. The authors estimated ship movement at 12 kn (faster than AFSC vessels would typically move), which would result in an underestimate of the potential for TTS to occur, but the modeled system (Hydrosweep) operates at lower frequencies and with a wider beam pattern than do typical AFSC systems, which would result in a likely more significant overestimate of TTS potential. The results of both studies emphasize that these effects would very likely only occur in the cone ensonified below the ship and that animal responses to the vessel (sound or physical presence) at these extremely close ranges would very likely influence their probability of being exposed to these levels. At the same distances, but to the side of the vessel, animals would not be exposed to these levels, greatly decreasing the potential for an animal to be exposed to the most intense signals. For example, Kremser *et al.* (2005) note that SPLs outside the vertical lobe, or beam, decrease rapidly with distance, such that SPLs within the horizontal lobes are about 20 dB less than the value found in the center of the beam. For certain species (*i.e.,* odontocete cetaceans and especially harbor porpoises), these ranges may be somewhat greater based on more recent data (Lucke *et al.,* 2009; Finneran and Schlundt, 2010) but are likely still on the order of hundreds of meters. In addition, potential behavioral responses further reduce the already low likelihood that an animal may approach close enough for any type of hearing loss to occur.

Various other studies have evaluated the environmental risk posed by use of specific scientific sonar systems. Burkhardt *et al.* (2007) considered both the Hydrosweep system evaluated by Kremser *et al.* (2005) and the Simrad EK60, which is used by the AFSC, and concluded that direct injury (*i.e.,* sound energy causes direct tissue damage) and indirect injury (*i.e.,* self-damaging behavior as response to acoustic exposure) would be unlikely given source and operational use (*i.e.,* vessel movement) characteristics, and that any behavioral responses would be unlikely to be significant. Similarly, Boebel *et al.* (2006) considered the Hydrosweep system in relation to the risk for direct or indirect injury, concluding that (1) risk of TTS (please see Boebel *et al.* (2006) for assumptions regarding TTS onset) would be less than two percent of the risk of ship strike and (2) risk of behaviorally-induced damage would be essentially nil due to differences in source characteristics between scientific sonars and sources typically associated with stranding events (*e.g.,* mid-frequency active sonar, but see discussion of the 2008 Madagascar stranding event below). It should be noted that the risk of direct injury may be greater when a vessel operates sources while on station (*i.e.,* stationary), as there is a greater chance for an animal to receive the signal when the vessel is not moving.

Boebel *et al.* (2005) report the results of a workshop in which a structured, qualitative risk analysis of a range of acoustic technology was undertaken, specific to use of such technology in the Antarctic. The authors assessed a single-beam echosounder commonly used for collecting bathymetric data (12 kHz, 232 dB, 10° beam width), an array of single-beam echosounders used for mapping krill (38, 70, 120, and 200 kHz; 230 dB; 7° beam width), and a multibeam echosounder (30 kHz, 236 dB, 150° x 1° swath width). For each source, the authors produced a matrix displaying the severity of potential consequences (on a six-point scale) against the likelihood of occurrence for a given degree of severity. For the former two systems, the authors determined on the basis of the volume of water potentially affected by the system and comparisons between its output and available TTS data that the chance of TTS is only in a small volume immediately under the

transducers, and that consequences of level four and above were inconceivable, whereas level one consequences (''Individuals show no response, or only a temporary (minutes) behavior change'') would be expected in almost all instances. Some minor displacement of animals in the immediate vicinity of the ship may occur. For the multibeam echosounder, Boebel *et al.* (2005) note that the high output and broad width of the swath abeam of the vessel makes displacement of animals more likely. However, the fore and aft beamwidth is small and the pulse length very short, so the risk of ensonification above TTS levels is still considered quite small and the likelihood of auditory or other injuries low. In general, the authors reached the same conclusions described for the single-beam systems but note that more severe impacts—including fatalities resulting from herding of sensitive species in narrow seaways—are at least possible (*i.e.,* may occur in exceptional circumstances). However, the probability of herding remains low not just because of the rarity of the necessary confluence of species, bathymetry, and likely other factors, but because the restricted beam shape makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel (Boebel *et al.,* 2005). More recently, Lurton (2016) conducted a modeling exercise and concluded similarly that likely potential for acoustic injury from these types of systems is negligible, but that behavioral response cannot be ruled out.

We have, however, considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from AFSC use of the multibeam echosounder, on the basis of a 2008 mass stranding of approximately one hundred melon-headed whales (*Peponocephala electra*) in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder; it is important to note that all AFSC sources operate at higher frequencies (see Table 2)) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system.

The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event.

The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for scientific applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Characteristics of the sound sources predominantly used by AFSC further reduce the likelihood of effects to marine mammals, as well as the intensity of effect assuming that an animal perceives the signal. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). In addition, intermittent exposures recover faster in comparison with continuous exposures of the same duration (Finneran *et al.,* 2010). Although echosounder pulses are, in general, emitted rapidly, they are not dissimilar to odontocete echolocation click trains. Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov, 1995; Mooney *et al.,* 2009b), especially for species with echolocation capabilities. Therefore, it is likely that marine mammals would indeed perceive echosounder signals as being intermittent.

We conclude here that, on the basis of available information on hearing and potential auditory effects in marine mammals, high-frequency cetacean species would be the most likely to potentially incur temporary hearing loss from a vessel operating high-frequency sonar sources, and the potential for PTS to occur for any species is so unlikely as to be discountable. Even for high-frequency cetacean species, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Additionally, given that behavioral responses typically include the temporary avoidance that might be expected (see below), the potential for auditory effects considered physiological damage (injury) is considered extremely low in relation to realistic operations of these devices. Given the fact that fisheries research survey vessels are moving, the likelihood that animals may avoid the vessel to some extent based on either its physical presence or due to aversive sound (vessel or active acoustic sources), and the intermittent nature of many of these sources, the potential for TTS is probably low for high-frequency cetaceans and very low to zero for other species.

Based on the source operating characteristics, most of these sources may be detected by odontocete cetaceans (and particularly high-

frequency specialists such as porpoises) but are unlikely to be audible to mysticetes (*i.e.,* low-frequency cetaceans) and some pinnipeds. While low-frequency cetaceans and pinnipeds have been observed to respond behaviorally to low- and mid-frequency sounds (*e.g.,* Frankel, 2005), there is little evidence of behavioral responses in these species to high-frequency sound exposure (*e.g.,* Jacobs and Terhune, 2002; Kastelein *et al.,* 2006). If a marine mammal does perceive a signal from a AFSC active acoustic source, it is likely that the response would be, at most, behavioral in nature. Behavioral reactions of free-ranging marine mammals to scientific sonars are likely to vary by species and circumstance. For example, Watkins *et al.* (1985) note that sperm whales did not appear to be disturbed by or even aware of signals from scientific sonars and pingers (36–60 kHz) despite being very close to the transducers, but Gerrodette and Pettis (2005) report that when a 38-kHz echosounder and ADCP were on (1) the average size of detected schools of spotted dolphins and pilot whales was decreased; (2) perpendicular sighting distances increased for spotted and spinner dolphins; and (3) sighting rates decreased for beaked whales.

Despite these observations, few experiments have been conducted to explicitly test for potential effects of echosounders on the behavior of wild cetaceans. Quick *et al.* (2017) describe an experimental approach to assess potential changes in short-finned pilot whale behavior during exposure to an echosounder (Simrad EK60 operated at 38 kHz, which is commonly used by AFSC). Previous studies of the effects of military tactical sonars on pilot whales failed to document overt avoidance responses, but did show changes in heading variance, which may be indicative of avoidance (Miller *et al.,* 2012; Quick *et al.,* 2017). In 2011, digital acoustic recording tags (DTAG) were attached to pilot whales off of North Carolina, with five of the whales exposed to signals from the echosounder over a period of eight days and four treated as control animals. DTAGS record both received levels of noise as well as orientation of the animal. Results did not show an overt response to the echosounder or a change to foraging behavior of tagged whales, but the whales did increase heading variance during exposure. The authors suggest that this response was not a directed avoidance response but was more likely a vigilance response, with animals maintaining awareness of the location of the echosounder through increased changes in heading variance (Quick *et al.,* 2017). Visual observations of behavior did not indicate any dramatic response, unusual behaviors, or changes in heading, and cessation of biologically important behavior such as feeding was not observed. These less overt responses to sound exposure are difficult to detect by visual observation, but may have important consequences if the exposure does interfere with biologically important behavior. Given the transient nature of AFSC use of active acoustic sources, we do not expect any behavioral disturbance to carry meaningful biological consequences for individuals.

As described above, behavioral responses of marine mammals are extremely variable, depending on multiple exposure factors, with the most common type of observed response being behavioral avoidance of areas around aversive sound sources. Certain odontocete cetaceans (particularly harbor porpoises and beaked whales) are known to avoid high-frequency sound sources in both field and laboratory settings (*e.g.,* Kastelein *et al.,* 2000, 2005, 2008a, 2008b; Culik *et al.,* 2001; Johnston, 2002; Olesiuk *et al.,* 2002; Carretta *et al.,* 2008). There is some additional, low probability for masking to occur for high-frequency specialists, but similar factors (directional beam pattern, transient signal, moving vessel) mean that the significance of any potential masking is probably inconsequential.

Potential Effects of Visual Disturbance

During AFSC surveys conducted in coastal areas, pinnipeds are expected to be hauled out and at times experience incidental close approaches by researchers in small vessels during the course of fisheries research activities. AFSC expects some of these animals will exhibit a behavioral response to the visual stimuli (*e.g.,* including alert behavior, movement, vocalizing, or flushing). NMFS does not consider the lesser reactions (*e.g.,* alert behavior) to constitute harassment. These events are expected to be infrequent and cause only a temporary disturbance on the order of minutes. Monitoring results from other activities involving the disturbance of pinnipeds and relevant studies of pinniped populations that experience more regular vessel disturbance indicate that individually significant or population level impacts are unlikely to occur.

In areas where disturbance of haul-outs due to periodic human activity (*e.g.,* researchers approaching on foot, passage of small vessels, maintenance activity) occurs, monitoring results have generally indicated that pinnipeds typically move or flush from the haul-out in response to human presence or visual disturbance, although some individuals typically remain hauled-out (*e.g.,* SCWA, 2012). The nature of response is generally dependent on species. For example, California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous sites. Monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2010).

Upon the occurrence of low-severity disturbance (*i.e.,* the approach of a vessel or person as opposed to an explosion or sonic boom), pinnipeds typically exhibit a continuum of responses, beginning with alert movements (*e.g.,* raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed pinnipeds typically re-occupy the haul-out within minutes to hours of the stimulus.

In a popular tourism area of the Pacific Northwest where human disturbances occurred frequently, past studies observed stable populations of seals over a twenty-year period (Calambokidis *et al.,* 1991). Despite high levels of seasonal disturbance by tourists using both motorized and non-motorized vessels, Calambokidis *et al.* (1991) observed an increase in site use (pup rearing) and classified this area as one of the most important pupping sites for seals in the region. Another study observed an increase in seal vigilance when vessels passed the haul-out site, but then vigilance relaxed within ten minutes of the vessels' passing (Fox, 2008). If vessels passed frequently within a short time period (*e.g.,* 24 hours), a reduction in the total number of seals present was also observed (Fox, 2008).

Level A harassment, serious injury, or mortality could likely only occur as a result of trampling in a stampede (a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus) or abandonment of pups. Pups could be present at times during AFSC research effort, but AFSC researchers take precautions to minimize disturbance and prevent any possibility of stampedes, including choosing travel routes as far away from hauled pinnipeds as possible and by

moving sample site locations to avoid consistent haulout areas. In addition, harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.,* 2002; Burns *et al.,* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As such, it is unlikely that infrequent disturbance resulting from AFSC research would interrupt the brief mother-pup bonding period within which disturbance could result in separation.

Disturbance of pinnipeds caused by AFSC survey activities would be expected to last for only short periods of time, separated by significant amounts of time in which no disturbance occurred. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

Anticipated Effects on Marine Mammal Habitat

Effects to Prey—In addition to direct, or operational, interactions between fishing gear and marine mammals, indirect (*i.e.,* biological or ecological) interactions occur as well, in which marine mammals and fisheries both utilize the same resource, potentially resulting in competition that may be mutually disadvantageous (*e.g.,* Northridge, 1984; Beddington *et al.,* 1985; Wickens, 1995). Marine mammal prey varies by species, season, and location and, for some, is not well documented. There is some overlap in prey of marine mammals and the species sampled and removed during AFSC research surveys, with primary species of concern being walleye pollock (*Gadus chalcogrammus*), Pacific cod (*G. macrocephalus*), Atka mackerel (*Pleurogrammus monopterygius*), sablefish (*Anoplopoma fimbria*), salmonids (*Oncorhynchus* spp.), and small, energy-rich, forage fish species such as Pacific sandlance (*Ammodytes* spp.) and Pacific herring (*Clupea pallasi*).

However, the total amount of these species taken in research surveys is very small relative to their overall biomass in the area (See Section 4.3.3 of the AFSC EA for more information on fish catch during research surveys). For example, AFSC research surveys are expected to catch approximately 433 metric tons (mt) of pollock per year in the GOARA. Research catch is therefore negligible compared to the allowable commercial harvest (111,530 mt in 2014) in the same area. For most commercial species, the average annual research catch is less than one percent of the allowable commercial catch. Other species of fish and invertebrates that are used as prey by marine mammals are taken in research surveys as well but, as indicated by these examples, the proportions of research catch compared to biomass and commercial harvest is very small.

Several AFSC fisheries research projects target prey of endangered western DPS Steller sea lions within the GOARA and BSAIRA. These studies are, in part, designed to assess aspects of the seasonal abundance and distribution of sea lion prey as part of a comprehensive examination of how nutritional status and prey availability may affect the recovery of the species. Some of these studies may be conducted within designated critical habitat for Steller sea lions, no-transit zones around rookeries, and areas designated as fishery closure zones. The primary prey caught in critical habitat includes rockfishes, pollock, Atka mackerel, arrowtooth flounder, and Pacific cod. Table 9–1 of AFSC's application shows the average annual AFSC fisheries research catch within Steller sea lion critical habitat. As described above, these amounts of prey are a small fraction of the commercial harvest total allowable catch, and an even smaller fraction of the biomass available to Steller sea lions. AFSC fisheries research catches are therefore anticipated to result in little to no effects on foraging sea lions in the general area or in their critical habitat. Prior ESA section 7 consultations conducted as part of the process for obtaining regional scientific research permits have not found any of the fisheries research prey removals to jeopardize listed species or to adversely modify critical habitat.

In addition to the small total biomass taken, some of the size classes of fish targeted in research surveys are very small (*e.g.,* juvenile salmonids are typically only centimeters long), and these small size classes are not known to be prey of marine mammals. Research catches are also distributed over a wide area because of the random sampling design covering large sample areas. Fish removals by research are therefore highly localized and unlikely to affect the spatial concentrations and availability of prey for any marine mammal species. The overall effect of research catches on marine mammals through competition for prey may therefore be considered insignificant for all species.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the AFSC's use of active acoustic sources). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please also see the previous discussion on masking in the ''Acoustic Effects'' subsection), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). As described above (''Acoustic Effects''), the signals emitted by AFSC active acoustic sources are generally high frequency, of short

duration, and transient. These factors mean that the signals will attenuate rapidly (not travel over great distances), may not be perceived or affect perception even when animals are in the vicinity, and would not be considered chronic in any given location. AFSC use of these sources is widely dispersed in both space and time. In conjunction with the prior factors, this means that it is highly unlikely that AFSC use of these sources would, on their own, have any appreciable effect on acoustic habitat. Sounds emitted by AFSC vessels would be of lower frequency and continuous, but would also be widely dispersed in both space and time. AFSC vessel traffic—including both sound from the vessel itself and from the active acoustic sources—is of very low density compared to commercial shipping traffic or commercial fishing vessels and would therefore be expected to represent an insignificant incremental increase in the total amount of anthropogenic sound input to the marine environment.

Physical Habitat—AFSC conducts some bottom trawling, which may physically damage seafloor habitat. Physical damage may include furrowing and smoothing of the seafloor as well as the displacement of rocks and boulders, and such damage can increase with multiple contacts in the same area (Schwinghamer *et al.,* 1998; Kaiser *et al.,* 2002; Malik and Mayer, 2007; NRC, 2002). The effects of bottom contact gear differ in each type of benthic environment. In sandy habitats with strong currents, the furrows created by mobile bottom contact gear quickly begin to erode because lighter weight sand at the edges of furrows can be easily moved by water back towards the center of the furrow (NRC, 2002). Duration of effects in these environments therefore tend to be very short because the terrain and associated organisms are accustomed to natural disturbance. By contrast, the physical features of more stable hard bottom habitats are less susceptible to disturbance, but once damaged or removed by fishing gear, the organisms that grow on gravel, cobbles, and boulders can take years to recover, especially in deeper water where there is less natural disturbance (NRC, 2002). However, the area of benthic habitat affected by AFSC research each year would be a very small fraction of total area and effects are not expected to occur in areas of particular importance.

Damage to seafloor habitat may also harm infauna and epifauna (*i.e.,* animals that live in or on the seafloor or on structures on the seafloor), including corals (Schwinghamer *et al.,* 1998; Collie *et al.,* 2000; Stevenson *et al.,* 2004). In general, recovery of biological damage varies based on the type of fishing gear used, the type of seafloor surface (*i.e.,* mud, sand, gravel, mixed substrate), and the level of repeated disturbances, but would be expected to occur within 1–18 months. However, repeated disturbance of an area can prolong the recovery time (Stevenson *et al.,* 2004), and recovery of corals may take significantly longer. However, AFSC catch records show that only minimal amounts of coral are captured (annual average of 100 kg of coral per year for most species groups). Relatively small areas would be impacted by AFSC bottom trawling and, because such surveys are conducted in the same areas but not in the exact same locations, they are expected to cause single rather than repeated disturbances in any given area. AFSC activities would not be expected to have any other impacts on physical habitat.

As described in the preceding, the potential for AFSC research to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant for all species. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization, which will inform both NMFS's consideration of whether the number of takes is ''small'' and the negligible impact determination.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Take of marine mammals incidental to AFSC research activities could occur as a result of (1) injury or mortality due to gear interaction (Level A harassment, serious injury, or mortality); (2) behavioral disturbance resulting from the use of active acoustic sources (Level B harassment only); or (3) behavioral disturbance of pinnipeds resulting from incidental approach of researchers (Level B harassment only). Below we describe how the potential take is estimated.

Estimated Take Due to Gear Interaction

In order to estimate the number of potential incidents of take that could occur through gear interaction, we first consider AFSC's and IPHC's record of past such incidents, and then consider in addition other species that may have similar vulnerabilities to AFSC trawl and IPHC longline gear as those species for which we have historical interaction records. Historical interactions with research gear are described in Table 4, and we anticipate that all species that interacted with AFSC or IPHC fisheries research gear historically could potentially be taken in the future. Available records are for the years 2004 through present (AFSC) and 1998 through present (IPHC). All historical AFSC interactions have taken place in the GOARA, and have occurred during use of either the Cantrawl surface trawl net or with a bottom trawl. Historical IPHC interactions have occurred during use of bottom longlines and were located in the GOARA (southeast Alaska) or west coast (offshore Oregon). AFSC has no historical interactions for any longline or gillnet gear, and there are no historical interactions in the BSAIRA or CSBSRA. Please see Figures 6–1 and C–6 in the AFSC request for authorization for specific locations of these incidents.

TABLE 4—HISTORICAL INTERACTIONS WITH RESEARCH GEAR

Gear	Survey	Date	Location [1]	Species	Number killed	Number released alive	Total
Bottom longline	IPHC setline	7/17/1999	West coast	Harbor seal	1		1
Bottom longline	IPHC setline	7/23/2003	SE Alaska	Steller sea lion	1		1
Bottom longline	IPHC setline	7/16/2007	SE Alaska	Steller sea lion	1		1

TABLE 4—HISTORICAL INTERACTIONS WITH RESEARCH GEAR—Continued

Gear	Survey	Date	Location [1]	Species	Number killed	Number released alive	Total
Bottom trawl	Gulf of Alaska Biennial Shelf and Slope Bottom Trawl Groundfish Survey.	6/13/2009	GOARA	Northern fur seal [2]	1		1
Bottom longline	IPHC setline	7/31/2011	West coast	Harbor seal	1		1
Surface trawl (Cantrawl).	Gulf of Alaska Assessment.	9/10/2011	GOARA	Dall's porpoise	1		1
Surface trawl (Cantrawl).	Gulf of Alaska Assessment.	9/21/2011	GOARA	Dall's porpoise	1		1
Bottom trawl	ADFG Large Mesh Trawl Survey.	9/5/2014	GOARA	Harbor seal	1		1
Bottom longline	IPHC setline	7/22/2016	SE Alaska	Steller sea lion	1		1
Total individuals captured.				Northern fur seal	1		1
				Dall's porpoise	2		2
				Harbor seal	3		3
				Steller sea lion	3		3

[1] AFSC interactions are described by research area. IPHC research programs are not distributed according to AFSC research areas and so are described by geographic location. Specific locations of all interactions are shown in Figures 6–1 and C–6 of the application.
[2] Based on the location of this incident, the captured animal was believed to be from the eastern Pacific stock of northern fur seal.

In order to use these historical interaction records as the basis for the take estimation process, and because we have no specific information to indicate whether any given future interaction might result in M/SI versus Level A harassment, we conservatively assume that all interactions equate to mortality for these fishing gear interactions. AFSC and IPHC have historically had only infrequent interactions with marine mammals, *e.g.,* from 2004–2015 AFSC conducted at least 1,250 trawl tows per year, with only three (a fourth occurred during a survey conducted by the Alaska Department of Fish and Game) marine mammal interactions (Table 4). However, we assume that any of the historically-captured species (northern fur seal, Dall's porpoise, harbor seal, Steller sea lion) could be captured in any year.

We consider all of the interaction records available to us. In consideration of these data, we assume that one individual of each of the historically-captured species (Table 4) could be captured per year over the course of the five-year period of validity for these proposed regulations, specific to relevant survey operations where the species occur (*e.g.,* one harbor seal taken per year specific to IPHC longline survey operations, one Dall's porpoise taken per year specific to AFSC trawl survey operations in GOARA, one Dall's porpoise taken per year specific to AFSC trawl survey operations in BSAIRA). Table 5 shows the projected five-year total captures of the historically-captured species for this proposed rule, as described above, for AFSC trawl gear and IPHC longline gear only. Although more than one individual Dall's porpoise has been captured in a single year, interactions have historically occurred only infrequently. Therefore, we believe that the above assumption appropriately reflects the likely total number of individuals involved in research gear interactions over a five-year period and that the assumption is precautionary in that it separately accounts for potential vulnerability of species to gear interaction in the different research areas. Harbor seals are expected to have less frequency of interaction than the fur seal or Steller sea lion due to its more inshore and coastal distribution. AFSC requests authorization of one take per harbor seal stock in each relevant research area over the 5-year period (note that these takes are not included in Table 5 but are incorporated in Table 7). These estimates are based on the assumption that annual effort (*e.g.,* total annual trawl tow time) over the proposed five-year authorization period will be approximately equivalent to the annual effort during prior years for which we have interaction records.

TABLE 5—PROJECTED FIVE-YEAR TOTAL TAKE FOR HISTORICALLY CAPTURED SPECIES [1]

Gear	Species	AFSC GOARA average annual take (total)	AFSC BSAIRA average annual take (total)	IPHC average annual take (total) [2]	Projected 5-year total
Trawl	Northern fur seal [3]	1 (5)	1 (5)		10
	Dall's porpoise	1 (5)	1 (5)		10
Longline	Harbor seal			1 (5)	5
	Steller sea lion			1 (5)	5

[1] Projected takes based on species interaction records in analogous commercial fisheries (versus historical records) are incorporated in Table 7 below, as are all projected takes within the CSBSRA.
[2] IPHC activities are not defined by the three AFSC research areas and may occur anywhere within the IPHC research areas off the U.S. west coast or in the Gulf of Alaska and Bering Sea. Projected IPHC harbor seal takes could occur to any stock of harbor seal. Historical IPHC takes of Steller sea lion have been of the eastern DPS (based on geographic location), but potential future takes could occur to either eastern or western DPS.
[3] Referring to expected potential future takes of eastern Pacific stock northern fur seals in AFSC trawl gear on basis of historical record. Additional take of California stock northern fur seals, inferred based on vulnerability and geographic overlap, are incorporated in Table 7 below.

As background to the process of determining which species not historically taken may have sufficient vulnerability to capture in AFSC gear to justify inclusion in the take authorization request (or whether species historically taken may have vulnerability to gears in which they have not historically been taken or additional vulnerability not reflected above due to activity in other areas such as the CSBSRA), we note that the AFSC is NMFS' research arm in Alaska and may be considered as a leading source of expert knowledge regarding marine mammals (*e.g.,* behavior, abundance, density) in the areas where they operate. The species for which the take request was formulated were selected by the AFSC, and we have concurred with these decisions. We also note that, in addition to consulting NMFS's List of Fisheries (LOF; described below), the historical interaction records described above for the IPHC informed our consideration of risk of interaction due to AFSC's use of longline gear (for which there are no historical interaction records).

In order to estimate the total potential number of incidents of takes that could occur incidental to the AFSC's use of trawl, longline, and gillnet gear, and IPHC's use of longline gear, over the five-year period of validity for these proposed regulations (*i.e.,* takes additional to those described in Table 5), we first consider whether there are additional species that may have similar vulnerability to capture in trawl or longline gear as the five species described above that have been taken historically and then evaluate the potential vulnerability of these and other species to additional gears.

We believe that the Pacific white-sided dolphin likely has similar vulnerability to capture in trawl gear as the Dall's porpoise, given similar habitat preferences and with documented vulnerability to capture in both commercial and research trawls. The harbor porpoise is also considered vulnerable to capture in trawl gear, but likely with less frequency of interaction given its inshore and coastal distribution. The Steller sea lion is considered to have similar vulnerability to capture in trawl gear as the northern fur seal, given similar habitat preferences and with documented vulnerability to capture in commercial trawls. In addition to the one northern fur seal per year from the eastern Pacific stock that could be captured in each relevant research area (Table 5), we assume that one additional northern fur seal from the California stock could be taken in trawl gear over the 5-year period. The assumed lesser frequency of interaction is due to presumed lower occurrence of California stock fur seals in AFSC research areas. Only approximately half of this relatively small stock of fur seals ranges to the eastern GOARA. Similar to the harbor porpoise, spotted seals are expected to have similar vulnerability to capture in trawl gear as historically captured pinnipeds, but with less frequency of interaction due to its more inshore and coastal distribution. AFSC requests authorization of one take of spotted seal in each relevant research area over the 5-year period. This assumption is supported by LOF records (Table 7).

Historical IPHC take records also illustrate likely similar vulnerabilities to capture by AFSC longline gear. However, due to reduced use of longline gear by AFSC relative to IPHC activity, expects that one Steller sea lion from each DPS could be taken over the 5-year period in each relevant research area. Despite IPHC records of harbor seal capture in longline gear, we do not believe that AFSC use of longline gear presents similar risk, in part due to the relative infrequency of use but also because of a lack of expected geographic overlap between AFSC longline sets and harbor seal occurrence. IPHC conducts many more longline sets per year but also conducts survey effort further inshore than does IPHC (water depths of 18 m). No take of harbor seals incidental to AFSC longline survey effort is proposed. Northern fur seals and California sea lions are considered analogous to Steller sea lions due to similar vulnerability to capture in longline gear. AFSC has requested authorization of one take over the 5-year period for each fur seal stock in each research area where fur seals are found and, on behalf of IPHC, requests authorization of one fur seal per year (which could be from either stock) and one California sea lion over the 5-year period. Finally, the spotted seal may have similar vulnerability to interaction with longline gear as the harbor seal, but likely with less frequency given the limited overlap between the species range and survey effort. We propose to authorize one take over the 5-year period for IPHC survey effort, but none for AFSC given very little expected overlap. These assumptions are supported by LOF records (Table 7).

In order to evaluate the potential vulnerability of additional species to trawl and longline and of all species to gillnet gear, we first consulted the LOF, which classifies U.S. commercial fisheries into one of three categories according to the level of incidental marine mammal M/SI that is known to occur on an annual basis over the most recent five-year period (generally) for which data has been analyzed: Category I, frequent incidental M/SI; Category II, occasional incidental M/SI; and Category III, remote likelihood of or no known incidental M/SI. We provide summary information, as presented in the 2017 LOF (82 FR 3655; January 12, 2017), in Table 6. In order to simplify information presented, and to encompass information related to other similar species from different locations, we group marine mammals by genus (where there is more than one member of the genus found in U.S. waters). Where there are documented incidents of M/SI incidental to relevant commercial fisheries, we note whether we believe those incidents provide sufficient basis upon which to infer vulnerability to capture in AFSC or IPHC research gear. For a listing of all Category I, II, and II fisheries using relevant gears, associated estimates of fishery participants, and specific locations and fisheries associated with the historical fisheries takes indicated in Table 6 below, please see the 2017 LOF. For specific numbers of marine mammal takes associated with these fisheries, please see the relevant SARs. More information is available online at *www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html* and *www.nmfs.noaa.gov/pr/sars/.*

TABLE 6—U.S. COMMERCIAL FISHERIES INTERACTIONS FOR TRAWL, LONGLINE, AND GILLNET GEAR FOR RELEVANT SPECIES

Species [1]	Trawl [2]	Vulnerability inferred?	Longline [2]	Vulnerability inferred?	Gillnet [2]	Vulnerability inferred?
North Pacific right whale	N	N	N	N	N	N
Bowhead whale	N	N	N	N	N	N
Gray whale	Y	N	N	N	Y	N
Humpback whale	Y	N	Y	N	Y	N

TABLE 6—U.S. COMMERCIAL FISHERIES INTERACTIONS FOR TRAWL, LONGLINE, AND GILLNET GEAR FOR RELEVANT SPECIES—Continued

Species [1]	Trawl [2]	Vulnerability inferred?	Longline [2]	Vulnerability inferred?	Gillnet [2]	Vulnerability inferred?
Balaenoptera spp	Y	N	Y	N	Y	N
Sperm whale	N	N	Y	Y	N	N
Kogia spp	n/a	n/a	Y	N	n/a	n/a
Cuvier's beaked whale	N	N	Y	N	N	N
Baird's beaked whale	N	N	N	N	N	N
Mesoplodon spp	N	N	Y	N	N	N
Beluga whale	N	Y	N	N	Y	N
Common bottlenose dolphin	n/a	n/a	Y	Y	n/a	n/a
Stenella spp	n/a	n/a	Y	N	n/a	n/a
Delphinus spp	n/a	n/a	Y	Y	n/a	n/a
Lagenorhynchus spp	Y	Y	N	N	Y	Y
Northern right whale dolphin	n/a	n/a	N	N	n/a	n/a
Risso's dolphin	n/a	n/a	Y	Y	n/a	n/a
Killer whale	Y	N	Y	Y	N	N
Globicephala spp	n/a	n/a	Y	Y	n/a	n/a
Harbor porpoise	Y	Y	Y	N	Y	Y
Dall's porpoise [3]	n/a	n/a	Y	Y	Y	Y
Guadalupe fur seal [4]	n/a	n/a	N	N	n/a	n/a
Northern fur seal [3]	n/a	n/a	Y	Y	Y	Y
California sea lion [5]	n/a	n/a	Y	Y	n/a	n/a
Steller sea lion [3]	Y	Y	n/a	n/a	Y	Y
Bearded seal	Y	Y	N	N	N	N
Phoca spp [3]	Y	Y	n/a	n/a	Y	Y
Ringed seal	Y	Y	Y	Y	N	N
Ribbon seal	Y	Y	N	N	N	N
Northern elephant seal	Y	Y	Y	N	Y	N

[1] Please refer to Table 3 for taxonomic reference.
[2] Indicates whether any member of the genus has documented incidental M/SI in a U.S. fishery using that gear in the most recent five-year timespan for which data is available. For those species not expected to occur in Alaskan waters, trawl and gillnet gear are not applicable (these gears would only be used in Alaskan waters).
[3] This exercise is considered ''not applicable'' for those species historically captured by AFSC or IPHC gear. Historical record, rather than analogy, is considered the best information upon which to base a take estimate.
[4] It is likely that Guadalupe fur seals are taken in Mexican fisheries, but there are no records available to us.
[5] There are no records of take for California sea lions in commercial longline fisheries, but there have been multiple takes of California sea lions in longline surveys conducted by NMFS's Southwest Fisheries Science Center. We therefore infer vulnerability for the species to research longline gear.

Information related to incidental M/SI in relevant commercial fisheries is not, however, the sole determinant of whether it may be appropriate to authorize take incidental to AFSC survey operations. A number of factors (*e.g.,* species-specific knowledge regarding animal behavior, overall abundance in the geographic region, density relative to AFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) were taken into account by the AFSC to determine whether a species may have a similar vulnerability to certain types of gear as historically taken species. In some cases, we have determined that species without documented M/SI may nevertheless be vulnerable to capture in AFSC research gear. Similarly, we have determined that some species groups with documented M/SI are not likely to be vulnerable to capture in AFSC gear. In these instances, we provide further explanation below. Those species with no records of historical interaction with AFSC research gear and no documented M/SI in relevant commercial fisheries, and for which the AFSC has not requested the authorization of incidental take, are not considered further in this section. The AFSC believes generally that any sex or age class of those species for which take authorization is requested could be captured.

In order to estimate a number of individuals that could potentially be captured in AFSC research gear for those species not historically captured, we first determine which species may have vulnerability to capture in a given gear. Of those species, we then determine whether any may have similar propensity to capture in a given gear as a historically captured species. For these species, we assume it is possible that take could occur while at the same time contending that, absent significant range shifts or changes in habitat usage, capture of a species not historically captured would likely be a very rare event. Therefore, we assume that capture would be a rare event such that authorization of a single take over the five-year period, for each region where the gear is used and the species is present, is likely sufficient to capture the risk of interaction.

Trawl—From the 2017 LOF, we infer vulnerability to trawl gear for the bearded seal, ringed seal, ribbon seal, and northern elephant seal. This is in addition to the species for which vulnerability is indicated by historical AFSC interactions (described above).

For the beluga whale, we believe that there is a reasonable likelihood of incidental take in trawl gear although there are no records of incidental M/SI in relevant commercial fisheries. Commercial fisheries using trawl gear have largely been absent from areas where beluga whales occur and, in particular, there are no commercial trawl fisheries in the CSBSRA. AFSC examined the potential for incidental take of beluga whales by evaluating the areas of overlap between the proposed fisheries research activities and beluga whale distribution, considering the seasonality of both the research activities and the species distributions as well as other factors that may influence the degree of potential overlap

such as sea and shorefast ice occurrence. In considering the possible take of beluga whales, the AFSC considered that beluga whales show behavior similar to large dolphins and porpoises. While no belugas have been taken in AFSC research or commercial trawl fisheries, there have been takes of large dolphins elsewhere in trawls. Beluga whales may occur in summer periods within the Chukchi and Beaufort Sea regions where the AFSC may be conducting trawl surveys. Thus, AFSC has requested authorization of one take each from two stocks of beluga whale (eastern Chukchi stock and Beaufort Sea stock) in fisheries research trawl surveys over the 5-year authorization period. Potential spatiotemporal overlap between AFSC trawl survey activities and other beluga whale stocks was evaluated and determined to not support a take authorization request for other stocks of beluga whale.

It is also possible that a captured animal may not be able to be identified to species with certainty. Certain pinnipeds and small cetaceans are difficult to differentiate at sea, especially in low-light situations or when a quick release is necessary. For example, a captured delphinid that is struggling in the net may escape or be freed before positive identification is made. Therefore, the AFSC has requested the authorization of incidental take for one unidentified pinniped and one unidentified small cetacean in trawl gear for each research area over the course of the five-year period of proposed authorization. One exception is for small cetaceans in the CSBSRA, as no cetacean interactions with trawl gear are expected in that region (other than the aforementioned potential beluga whale interactions), as small cetaceans occur only rarely in this region.

Longline—The process is the same as is described above for trawl gear. From the 2017 LOF, we infer vulnerability to longline gear for the Dall's porpoise, Risso's dolphin, bottlenose dolphin, common dolphin, short-finned pilot whale, and ringed seal. This is in addition to the species for which vulnerability is indicated by historical AFSC interactions (described above).

Based on the 2017 LOF and historical observations of sperm whale and killer whale interactions with research longline gear, we also infer vulnerability to interaction with longline gear for killer whales (Alaska resident stock only) and sperm whales (North Pacific stock only). Although we generally believe that, despite records of interaction with analogous commercial fisheries, the potential for incidental take of any large whale (*i.e.,* baleen whales or sperm whale), beaked whale, or killer whale in research gear is so unlikely as to be discountable, there is a long history of attempted depredation of longline gear by animals from these stocks in Alaska, with take of these species having occurred in commercial fisheries. Between 2010 and 2014, five sperm whales are recorded as having been seriously injured in the Gulf of Alaska sablefish longline fishery, while there have been two instances of killer whale M/SI in BSAI longline fisheries (Helker *et al.,* 2016). Cetaceans have never been caught or entangled in AFSC or IPHC longline research gear. If interactions occur, marine mammals depredate hooked fish from the gear, but typically leave the hooks attached although occasionally bent or broken (*i.e.,* evidence of the interaction). Certain species, particularly killer whales in the Bering Sea and sperm whales in the Gulf of Alaska, are commonly attracted to longline fishing operations and are adept at removing fish from longline gear as it is retrieved. Although we consider it unlikely that AFSC or IPHC research activities would result in any takes of either sperm whales or killer whales, AFSC has requested the authorization of such take as a precautionary measure, given the observed interactions of these species with research longline gear. Since longline depredation by sperm whales is known to occur only in Alaskan waters, requested take is limited to the North Pacific stock. Commercial fishery takes have been reported for both transient and resident stocks of killer whale. However, the Alaska resident stock consumes fish (*e.g.,* Herman *et al.,* 2005) and is most likely to be involved in depredation of research catch. In contrast, transient killer whales feed on marine mammals and are less likely to interact with research longline gears, and the limited effort for AFSC and IPHC research surveys compared to commercial fisheries does not justify take authorization for transient whales.

Although there are LOF interaction records in longlines for stenellid dolphin species, the harbor porpoise, and the northern elephant seal, we do not propose to authorize take of these species through use of longline. No take is anticipated for the striped dolphin or for the long-beaked stock of common dolphin and coastal stock of bottlenose dolphin because of their expected pelagic and southerly distributions (respectively) relative to expected IPHC survey effort. Harbor porpoise have only been recorded as taken in commercial fisheries through use of pelagic longline in the Atlantic Ocean; there are no records of incidental take of harbor porpoise in longline fisheries in Alaska or off the U.S. west coast. Similarly, the LOF indicates that elephant seal interaction occurred only in a Hawaiian pelagic longline fishery.

As described for trawl gear, it is also possible that a captured animal may not be able to be identified to species with certainty. Although we expect that cetaceans would likely be able to be identified when captured in longline gear, pinnipeds are considered more likely to escape before the animal may be identified. Therefore, the AFSC has requested the authorization of incidental take for one unidentified pinniped for each relevant research area, in addition to one unidentified pinniped captured in IPHC surveys, over the course of the five-year period of proposed authorization.

Gillnet—The process is the same as is described above for trawl gear. From the 2017 LOF, we infer vulnerability to gillnet gear for the Pacific white-sided dolphin, harbor porpoise, Dall's porpoise, harbor seal, northern fur seal, and Steller sea lion. Gillnets are used only in Prince William Sound and at Little Port Walter in southeast Alaska. Therefore, only one take is proposed for authorization for relevant stocks of the vulnerable species over the 5-year period. This includes both the eastern Pacific and California stocks of northern fur seal and the Prince William Sound and Sitka/Chatham Strait stocks of harbor seal. Although there are LOF interaction records in gillnets for the beluga whale and the northern elephant seal, we do not expect these species to be present in areas where AFSC proposes to use gillnet research gear and no take of these species through use of gillnet is proposed for authorization.

AFSC also expects that there may be an interaction resulting in escape of an unidentified cetacean in gillnet gear, and has requested the authorization of incidental take for one unidentified cetacean over the course of the five-year period of proposed authorization.

TABLE 7—TOTAL ESTIMATED TAKE DUE TO GEAR INTERACTION, 2018–23 [1]

Species	Estimated 5-year total, trawl	Estimated 5-year total, longline (AFSC)	Estimated 5-year total, longline (IPHC) [2]	Estimated 5-year total, gillnet	Total, all gears
Sperm whale (North Pacific)		1 (GOARA)	1		2
Beluga whale (eastern Chukchi)	1 (CSBSRA)				1
Beluga whale (Beaufort Sea)	1 (CSBSRA)				1
Bottlenose dolphin (offshore)			1		1
Common dolphin			1		1
Pacific white-sided dolphin	5 (GOARA)			1	6
Risso's dolphin			1		1
Killer whale (Alaska resident)		1 (BSAIRA)	1		2
Short-finned pilot whale			1		1
Harbor porpoise (Southeast Alaska) [3].					1
Harbor porpoise (Gulf of Alaska)	1			1	2
Harbor porpoise (Bering Sea)	1				1
Dall's porpoise	10 (5 GOARA/5 BSAIRA).	2 (1 GOARA/1 BSAIRA).	1	1	14
Northern fur seal (eastern Pacific).	10 (5 GOARA/5 BSAIRA).	2 (1 GOARA/1 BSAIRA).	5	1	13–18
Northern fur seal (California)	1 (GOARA)	1 (GOARA)		1	3–8
California sea lion			1		1
Steller sea lion (eastern)	5	1	5	1	7–12
Steller sea lion (western)	10 (5 GOARA/5 BSAIRA).	2 (1 GOARA/1 BSAIRA).		1	13–18
Bearded seal	2 (1 BSAIRA/1 CSBSRA).				2
Harbor seal [4]	12		5	2	19
Spotted seal	2 (1 BSAIRA/1 CSBSRA).		1		3
Ringed seal	2 (1 BSAIRA/1 CSBSRA).	1	1		4
Ribbon seal	2 (1 BSAIRA/1 CSBSRA).				2
Northern elephant seal	1				1
Unidentified pinniped [5]	3	2	1		6
Unidentified small cetacean [6]	2			1	3

[1] Please see Table 6 and preceding text for derivation of take estimates. Takes proposed for authorization are informed by area- and gear-specific vulnerability. However, IPHC longline takes are considered separately. AFSC use of gillnets occurs only in the GOARA. Only trawl gear is used in the CSBSRA.

[2] Potential IPHC takes are not specific to any area or stock. For example, the one expected take of Dall's porpoise could occur to an individual of either the CA/OR/WA or Alaska stocks. For harbor seals, although five total takes may occur over the 5-year period of the proposed regulations, no more than one take is anticipated from any given stock.

[3] For harbor porpoise in southeast Alaska, we propose to authorize take of one animal in all gears combined (*i.e.,* trawl and gillnet) over the 5-year period. In general, harbor porpoise would be expected to have the same vulnerability to particular gears regardless of stock. However, AFSC proposes to use acoustic pingers on surface trawl nets in southeast Alaska, reducing the likelihood of porpoise interaction with that gear. Use of acoustic pingers is proposed for gillnets in both southeast Alaska and in the Gulf of Alaska.

[4] For trawl gear, the numbers include one take during the 5-year period for each Alaskan harbor seal stock (three stocks in BSAIRA and nine stocks in GOARA). For gillnet gear, the numbers include one take during the 5-year period for the Prince William Sound and Sitka/Chatham Strait stocks. For IPHC longline surveys, the five takes proposed for authorization could occur for any harbor seal stock, though no more than one take would be expected to occur over the 5-year period for any given stock.

[5] Includes one unidentified pinniped in each research area (trawl) and one unidentified pinniped in the GOARA and BSAIRA and for IPHC surveys (longline).

[6] Includes one unidentified small cetacean in the GOARA and BSAIRA (trawl) and one unidentified cetacean in the GOARA (gillnet). This is not anticipated to apply to harbor porpoise in southeast Alaska, as the already low probability of gear interaction is further reduced through use of additional mitigation (described in footnote 3).

Whales—For large whales (baleen whales and sperm whales) and small whales (considered here to be beaked whales, *Kogia* spp., and killer whales), observed M/SI is extremely rare for trawl and gillnet gear and, for most of these species, only slightly more common in longline gear. Furthermore, with the exception of sperm whales and killer whales (who attempt to depredate longline gear), most of these species longline interactions are with pelagic gear. Baleen whale interactions with longline gear represent entanglements in pelagic mainlines, while beaked whales and *Kogia* spp. typically have a pelagic distribution resulting in a lack of spatial overlap with bottom longline fisheries. Although whale species could become captured or entangled in AFSC gear, the probability of interaction is extremely low considering the lower level of effort relative to that of commercial fisheries. For example, there were estimated to be three total incidents of sperm whale M/SI in the Hawaii deep-set longline fishery over a five-year period. This fishery has 129 participants, and the fishery as a whole exerts substantially greater effort in a given year than does the AFSC. In a very rough estimate, we can say that these three estimated incidents represent an insignificant per-participant interaction rate of 0.005 per year, despite the greater effort. Similarly, there were zero documented interactions over a five-year period in the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery, despite a reported fishing effort of 8,044 sets and 5,955,800 hooks in 2011 alone (Garrison and Stokes, 2012). With an

average soak time of ten to fourteen hours, this represents an approximate minimum of almost sixty million hook hours. AFSC and IPHC effort would be a small fraction of this per year. Other large whales and small whales have similarly low rates of interaction with commercial fisheries, despite the significantly greater effort. In addition, most large whales and small whales generally have, with few exceptions, very low densities in areas where AFSC and IPHC research occurs relative to other species (see Tables 10–12). With exceptions for sperm whales and killer whales that are known to depredate research longline gear in particular locations, we believe it extremely unlikely that any large whale or small whale would be captured or entangled in AFSC research gear.

Estimated Take Due to Acoustic Harassment

As described previously (''Potential Effects of the Specified Activity on Marine Mammals and Their Habitat''), we believe that AFSC use of active acoustic sources has, at most, the potential to cause Level B harassment of marine mammals. In order to attempt to quantify the potential for Level B harassment to occur, NMFS (including the AFSC and acoustics experts from other parts of NMFS) developed an analytical framework considering characteristics of the active acoustic systems described previously under ''Description of Active Acoustic Sound Sources,'' their expected patterns of use, and characteristics of the marine mammal species that may interact with them. We believe that this quantitative assessment benefits from its simplicity and consistency with current NMFS acoustic guidance regarding Level B harassment but caution that, based on a number of deliberately precautionary assumptions, the resulting take estimates may be seen as an overestimate of the potential for behavioral harassment to occur as a result of the operation of these systems. Additional details on the approach used and the assumptions made that result in these estimates are described below.

In 2016, NMFS released updated ''Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing'' with revised metrics and thresholds to assess the potential for injury (*e.g.,* permanent threshold shift) from acoustic sources. While the AFSC's documents refer to NMFS's historic guidelines, as the acoustic analysis was completed prior to the release of the technical guidance, the conclusions regarding the potential for injury remain the same. Most importantly, the technical guidance now explicitly takes into account the duration of the sound through the use of the sound exposure level (SEL) metric, as opposed to the previous use of root mean square (rms) sound pressure level (SPL). The effect of this different metric, in particular for the very short duration sounds used for these echosounders, is to largely reduce the exposure level of sound an animal is exposed to for short duration sounds (*e.g.,* for a 1 ms ping, an SPL source level is reduced by 30 dB in the SEL metric) offsetting changes in the thresholds themselves. While energy is accumulated over time using SEL, the previous conclusion that an individual would have to remain exceptionally close to a sound source for unrealistic lengths of time holds, suggesting the likelihood of injury occurring is exceedingly small and is therefore not considered further in this analysis.

The assessment paradigm for active acoustic sources used in AFSC fisheries research is relatively straightforward and has a number of key simplifying assumptions. NMFS's current acoustic guidance requires in most cases that we assume Level B harassment occurs when a marine mammal receives an acoustic signal at or above a simple step-function threshold. Sound produced by these sources are very short in duration (typically on the order of milliseconds), intermittent, have high rise times, and are operated from moving platforms. They are consequently considered most similar to impulsive sources, which are subject to the 160 dB rms criterion. Estimating the number of exposures at the specified received level requires several determinations, each of which is described sequentially below:

(1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;

(2) The operational areas exposed to levels at or above those associated with Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or ''swath width'') of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of individuals for which sound levels exceed the relevant threshold for each area. The number of potential incidents of Level B harassment is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher (to a maximum depth of 500 m) and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the upper 200 m of the water column versus those that regularly dive deeper during foraging and transit. Because depths range dramatically along the margin of the continental slope that define the outer edge of the survey areas, but deeper surveyed depths rarely range over 500 m in practice, the depth range for determining volumes was set at 500 m for deep diving species. Methods for estimating each of these calculations are described in greater detail in the following sections, along with the simplifying assumptions made, and followed by the take estimates. Note that the IPHC does not use active acoustic systems for data acquisition purposes; therefore, potential Level B harassment is only considered for AFSC survey operations in the GOARA, BSAIRA, and CSBSRA.

Sound Source Characteristics—An initial characterization of the general source parameters for the primary active acoustic sources operated by the AFSC was conducted, enabling a full assessment of all sound sources used by the AFSC and delineation of Category 1 and Category 2 sources, the latter of which were carried forward for analysis here (see Table 2). This auditing of the active acoustic sources also enabled a determination of the predominant sources that, when operated, would have sound footprints exceeding those from any other simultaneously used sources. These sources were effectively those used directly in acoustic propagation modeling to estimate the zones within which the 160 dB rms received level would occur.

Many of these sources can be operated in different modes and with different output parameters. In modeling their potential impact areas, those features among those given previously in Table 2 (*e.g.,* lowest operating frequency) that would lead to the most precautionary estimate of maximum received level ranges (*i.e.,* largest ensonified area) were used. The effective beam patterns took into account the normal modes in which these sources are typically operated. While these signals are brief and intermittent, a conservative assumption was taken in ignoring the temporal

pattern of transmitted pulses in calculating Level B harassment events. Operating characteristics of each of the predominant sound sources were used in the calculation of effective line-kilometers and area of exposure for each source in each survey.

Note that, for purposes of this analysis, the EK60 is assumed to operate at 18 kHz, the ES60 is assumed to operate at 38 kHz, and the 7111 is assumed to operate at 100 kHz. Therefore, we assume that Level B harassment of low-frequency cetaceans may only occur in response to exposure to signals from the EK60, as signals from the other two systems are outside the generalized hearing range for this group. Similarly, we assume that pinnipeds would not experience harassment upon exposure to signals from the 7111, which produces signals outside the generalized hearing range of both otariid and phocid pinnipeds.

TABLE 8—EFFECTIVE EXPOSURE AREAS FOR PREDOMINANT ACOUSTIC SOURCES ACROSS TWO DEPTH STRATA

Active acoustic system	Effective exposure area: Sea surface to 200 m depth (km^2)	Effective exposure area: Sea surface to 500 m depth (km^2)
Simrad EK60/ME70 narrow beam echosounder	0.0173	0.056
Simrad ES60 multibeam echosounder	0.0112	0.036
Reson 7111 multibeam echosounder	0.1419	0.914

Among Category 2 sources (Table 2), three predominant sources (Table 8) were identified as having the largest potential impact zones during operations, based on their relatively lower output frequency, higher output power, and their operational pattern of use. Estimated effective cross-sectional areas of exposure were estimated for each of the predominant sources using a commercial software package (MATLAB) and key input parameters including source-specific operational characteristics (*e.g.,* frequency, beamwidth, source level; see Table 2) and environmental characteristics (*i.e.,* temperature, salinity, pH, and latitude). Where relevant, calculations were performed for different notional operational scenarios and the largest cross-sectional area used in estimating take (*e.g.,* see Figure 6–2 of AFSC's application, which displays a simple visualization of a two-dimensional slice of modeled sound propagation to illustrate the predicted area ensonified to the 160-dB threshold by the nominal EK60 beam pattern assuming side lobes of ensonification).

In determining the effective line-kilometers for each of these predominant sources, the operational patterns of use relative to one another were further applied to determine which source was the predominant one operating at any point in time for each survey. When multiple sound sources are used simultaneously, the one with the largest potential impact zone in each relevant depth strata is considered for use in estimating exposures. For example, when species (*e.g.,* sperm whales) regularly dive deeper than 200 m, the largest potential impact zone was calculated for both depth strata and in some cases resulted in a different source being predominant in one depth stratum or the other. This enabled a more comprehensive way of accounting for maximum exposures for animals diving in a complex sound field resulting from simultaneous sources with different spatial profiles. This overall process effectively resulted in three sound sources (Table 8; ES60, EK60/ME70, and 7111) comprising the total effective line-kilometers, their relative proportions depending on the nature of each survey.

Calculating Effective Line-Kilometers—As described below, based on the operating parameters for each source type, an estimated volume of water ensonified at or above the 160 dB rms threshold was determined. In all cases where multiple sources are operated simultaneously, the one with the largest estimated acoustic footprint was considered to be the effective source. This was calculated for each depth stratum, which in some cases resulted in different sources being predominant in each depth stratum for all line-kilometers when multiple sources were in operation; this was accounted for in estimating overall exposures for species that utilize both depth strata (deep divers). The total number of line-kilometers associated with relevant surveys was determined, as was the relative percentage of surveyed linear kilometers associated with each depth stratum (equating to the proportion of each survey occurring on the shallower upper continental shelf versus those in deeper waters). The total line-kilometers for each survey, the predominant source, the effective percentages associated with each depth, and the effective total volume ensonified are given below (Table 9).

Calculating Volume of Water Ensonified—The cross-sectional area of water ensonified at or above the 160 dB rms threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. We used a spherical spreading model (where propagation loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source), a reasonable approximation over the relatively short ranges involved. Spherical spreading is a reasonable assumption even in relatively shallow waters since, taking into account the beam angle, the reflected energy from the seafloor will be much weaker than the direct source and the volume influenced by the reflected acoustic energy would be much smaller over the relatively short ranges involved. We also accounted for the frequency-dependent absorption coefficient and beam pattern of these sound sources, which is generally highly directional. The lowest frequency was used for systems that are operated over a range of frequencies. The vertical extent of this area is calculated for two depth strata. These results, shown in Table 9, were applied differentially based on the typical vertical stratification of marine mammals (see Table 10).

Following the determination of effective sound exposure area for transmissions considered in two dimensions, the next step was to determine the effective volume of water ensonified at or above 160 dB rms for the entirety of each survey. For each of the three predominant sound sources, the volume of water ensonified is estimated as the athwartship cross-sectional area (in square kilometers) of sound at or above 160 dB rms (as illustrated in Figure 6.2 of AFSC's

application) multiplied by the total distance traveled by the ship. Where different sources operating simultaneously would be predominant in each different depth strata, the resulting cross-sectional area calculated took this into account. Specifically, for shallow-diving species this cross-sectional area was determined for whichever was predominant in the shallow stratum, whereas for deeper-diving species this area was calculated from the combined effects of the predominant source in the shallow stratum and the (sometimes different) source predominating in the deep stratum. This creates an effective total volume characterizing the area ensonified when each predominant source is operated and accounts for the fact that deeper-diving species may encounter a complex sound field in different portions of the water column.

Marine Mammal Densities—One of the primary limitations to traditional estimates of behavioral harassment from acoustic exposure is the assumption that animals are uniformly distributed in time and space across very large geographical areas, such as those being considered here. There is ample evidence that this is in fact not the case, and marine species are highly heterogeneous in terms of their spatial distribution, largely as a result of species-typical utilization of heterogeneous ecosystem features. Some more sophisticated modeling efforts have attempted to include species-typical behavioral patterns and diving parameters in movement models that more adequately assess the spatial and temporal aspects of distribution and thus exposure to sound. While simulated movement models were not used to mimic individual diving or aggregation parameters in the determination of animal density in this estimation, the vertical stratification of marine mammals based on known or reasonably assumed diving behavior was integrated into the density estimates used.

First, typical two-dimensional marine mammal density estimates (animals/km^2) were obtained from various sources for each ecosystem area. These were estimated from marine mammal Stock Assessment Reports and other sources (please see Table 6–10d of AFSC's application). There are a number of caveats associated with these estimates:

(1) They are often calculated using visual sighting data collected during one season rather than throughout the year. The time of year when data were collected and from which densities were estimated may not always overlap with the timing of AFSC fisheries surveys (detailed previously in ''Detailed Description of Activities'').

(2) Marine mammal survey areas do not necessarily coincide spatially with the entire AFSC fisheries research area boundaries. Estimated densities from the survey areas are assumed to apply to the entire research area.

(3) The densities used for purposes of estimating acoustic exposures do not take into account the patchy distributions of marine mammals in an ecosystem, at least on the moderate to fine scales over which they are known to occur. Instead, animals are considered evenly distributed throughout the assessed area, and seasonal movement patterns are not taken into account.

In addition, and to account for at least some coarse differences in marine mammal diving behavior and the effect this has on their likely exposure to these kinds of often highly directional sound sources, a volumetric density of marine mammals of each species was determined. This value is estimated as the abundance averaged over the two-dimensional geographic area of the surveys and the vertical range of typical habitat for the population. Habitat ranges were categorized in two generalized depth strata (0–200 m and 0 to greater than 200 m) based on gross differences between known generally surface-associated and typically deep-diving marine mammals (*e.g.,* Reynolds and Rommel, 1999; Perrin *et al.,* 2009). Animals in the shallow-diving stratum were assumed, on the basis of empirical measurements of diving with monitoring tags and reasonable assumptions of behavior based on other indicators, to spend a large majority of their lives (*i.e.,* greater than 75 percent) at depths shallower than 200 m. Their volumetric density and thus exposure to sound is therefore limited by this depth boundary. In contrast, species in the deeper-diving stratum were assumed to regularly dive deeper than 200 m and spend significant time at these greater depths. Their volumetric density and thus potential exposure to sound at or above the 160 dB rms threshold is extended from the surface to 500 m, *i.e.,* nominal maximum water depth in regions where these surveys occur.

The volumetric densities are estimates of the three-dimensional distribution of animals in their typical depth strata. For shallow-diving species the volumetric density is the area density divided by 0.2 km (*i.e.,* 200 m). For deeper diving species, the volumetric density is the area density divided by a nominal value of 0.5 km (*i.e.,* 500 m). The two-dimensional and resulting three-dimensional (volumetric) densities for each species in each ecosystem area are shown below.

Using Area of Ensonification and Volumetric Density to Estimate Exposures—Estimates of potential incidents of Level B harassment (*i.e.,* potential exposure to levels of sound at or exceeding the 160 dB rms threshold) are then calculated by using (1) the combined results from output characteristics of each source and identification of the predominant sources in terms of acoustic output; (2) their relative annual usage patterns for each operational area; (3) a source-specific determination made of the area of water associated with received sounds at the extent of a depth boundary; and (4) determination of a biologically-relevant volumetric density of marine mammal species in each area. Estimates of Level B harassment by acoustic sources are the product of the volume of water ensonified at 160 dB rms or higher for the predominant sound source for each relevant survey and the volumetric density of animals for each species. These annual estimates are given below.

Most species designated as shallow divers (< 200 m depth) were considered to be shelf and inshore species, and their lineal distance was the extent of survey areas to 200 m in depth. However, some shallow diving species also occur in offshore waters so the density to 200 m depth was applied to the volumetric density of all survey tracks. These species included gray whale; harbor porpoise (GOARA only); northern fur seal; Steller sea lion; Dalls' porpoise; beluga whale (Bristol Bay stock only); humpback whale, killer whales, and sei whales (BSAIRA only); and bearded, ribbon, ringed, and spotted seals (BSAIRA only). Ensonified volumes for deep diving species were summed for the shallow inshore component and the deeper waters.

TABLE 9—ANNUAL LINEAR SURVEY KILOMETERS FOR EACH VESSEL AND ITS PREDOMINANT SOURCE WITHIN TWO DEPTH STRATA

Vessel	Survey	Line-kms	Dominant source	Distance 0–200 m (percent)	Distance > 200 m (percent)	Volume ensonified (0–200 m)	Volume ensonified (200–500 m)
GOARA							
Oscar Dyson	Pollock summer acoustic trawl	17,558	EK60/ME70	74	26	224.8	256.1
Oscar Dyson	Pollock winter acoustic trawl (Shelikof Strait)	9,540	EK60/ME70	31	69	51.2	369.3
Oscar Dyson	Pollock winter acoustic trawl (Shumagin/Sanak Islands)	4,520	EK60/ME70	99	1	77.4	2.5
Charter vessels	Shelf and slope bottom trawl groundfish	9,189	ES60	76	24	78.2	79.4
BSAIRA							
Oscar Dyson	Pollock summer acoustic trawl (Bering Sea)	25,460	EK60/ME70	91	9	400.8	128.5
Oscar Dyson	Pollock winter acoustic trawl (Bogoslof Island)	2,788	EK60/ME70	15	85	7.2	132.9
Charter vessels	Aleutian Islands shelf and slope bottom trawl groundfish.	3,190	ES60	61	39	21.8	44.8
Charter vessels	Arctic Ecosystem Integrated Survey	2,599	ES60	100	0	29.1	0
Charter vessels	Bering Sea shelf bottom trawl	11,200	ES60	100	0	125.4	0
Charter vessels	Eastern Bering Sea upper continental slope trawl summer.	1,125	ES60	0	100	0	40.5
Charter vessels	Bering Aleutian Salmon International Survey (BASIS)	12,288	ES60	95	5	130.7	34.5
Charter vessels	Northern Bering Sea bottom trawl	1,440	ES60	100	0	16.1	0
Charter vessels	Response of fish to drop camera systems	259	ES60	100	0	2.9	0
Fairweather	Acoustic research and mapping to characterize EFH (FISHPAC).	145	Reson 7111	100	0	20.6	0
CSBSRA							
Charter vessels	Arctic Ecosystem Integrated Survey	5,915	ES60	100	0	66.2	0

Next, we provide volumetric densities for marine mammals and total estimated takes by Level B harassment, by dominant source and total, for each stock in each of the three research areas (Tables 10–12). We also provide a sample calculation.

We first determine the source-specific ensonified volume of water for each relevant survey and then determine species-specific exposure estimates for the shallow and deep (if applicable; Tables 10–12) depth strata. First, we know the estimated source-specific cross-sectional ensonified area within the shallow and deep strata (Table 8) and the number of annual line-kilometers for each survey and use these values to derive an estimated ensonified volume. Survey- and stratum-specific exposure estimates are the product of these ensonified volumes and the species-specific volumetric densities (Table 10).

To illustrate the process, we focus on the EK60 and the sperm whale in the GOARA.

(1) EK60 ensonified volume; 0–200 m: 0.0173 km^2 * 17,558 km * 0.74 = 224.8 km^3.

(2) EK60 ensonified volume; >200 m: 0.0561 km^2 * 17,558 km * 0.26 = 256.1 km^3.

(3) Repeat steps 1 and 2 for each relevant survey; sum total ensonified volumes in each depth stratum

(4) Estimated exposures to sound ≥160 dB rms; sperm whale; EK60: (0.002 sperm whales/km^3 * 353.4 km^3 (total ensonified volume; 0–200 m) = 0.7) + (0.002 sperm whales/km^3 * 627.9 km^3 (total ensonified volume; 200–500 m) = 1.3) = 2 estimated sperm whale exposures to SPLs ≥160 dB rms resulting from use of the EK60.

(5) Repeat steps 1–4 for additional surveys with other predominant sound sources.

Totals in Tables 10–12 represent sums across all relevant surveys/sources rounded up to the nearest whole number. The AFSC has requested the authorization of take indicated by rounding.

TABLE 10—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE GOARA

Species	Shallow	Deep	Area density (animals/ km^2) [1]	Volumetric density (animals/ km^3) [2]	Estimated level B harassment, 0–200 m		Estimated level B harassment, >200 m		Total
					EK60	ES60	EK60	ES60	
North Pacific right whale	X	.....	0.005	0.027	0.1	.....	.....	.....	1
Gray whale	X	.....	1.700	8.500	4,649.4	.....	.....	.....	4,650
Humpback whale (CNP)	X	.....	0.065	0.327	115.4	.....	.....	.....	116
Humpback whale (WNP)	X	.....	0.001	0.004	1.2	.....	.....	.....	2
Minke whale	X	.....	0.001	0.006	2.1	.....	.....	.....	3
Sei whale	X	.....	0.000	0.000	0.01	.....	.....	.....	1
Fin whale	X	.....	0.020	0.100	35.3	.....	.....	.....	36
Blue whale	X	.....	0.000	0.001	0.2	.....	.....	.....	1
Sperm whale	.....	X	0.001	0.002	0.7	0.2	1.3	0.2	3
Cuvier's beaked whale	.....	X	0.000	0.000	0.1	0	0.1	0	1
Baird's beaked whale	.....	X	0.002	0.003	1.2	0.3	2.1	0.3	4
Stejneger's beaked whale	.....	X	0.005	0.010	3.6	0.8	6.4	0.8	12
Beluga whale (Cook Inlet) [3]	X	.....	0.200	1.000	.....	2.5	.....	.....	3
Pacific white-sided dolphin	X	.....	0.015	0.075	26.5	5.9	.....	.....	33
Killer whale (offshore)	X	.....	0.011	0.055	19.4	4.3	.....	.....	24
Killer whale (west coast transient)	X	.....	0.006	0.028	9.9	2.2	.....	.....	13
Killer whale (AT1 transient)	X	.....	0.001	0.004	1.2	0.3	.....	.....	2
Killer whale (GOA/BSAI transient)	X	.....	0.001	0.004	1.2	0.3	.....	.....	2
Killer whale (northern resident)	X	.....	0.003	0.013	4.4	1.0	.....	.....	6
Killer whale (AK resident)	X	.....	0.009	0.045	15.9	3.5	.....	.....	20
Harbor porpoise (GOA)	X	.....	0.200	1.000	547.0	102.9	.....	.....	650
Harbor porpoise (SEAK)	X	.....	0.110	0.550	300.8	56.6	.....	.....	358
Dall's porpoise	X	.....	1.600	8.000	4,375.9	823.3	.....	.....	5,200
Northern fur seal (CA) [4]	X	.....	0.044	0.219	119.5	22.5	.....	.....	143
Northern fur seal (EP—winter) [5]	X	.....	0.377	1.883	458.0	.....	.....	.....	459
Northern fur seal (EP—summer)	X	.....	0.116	0.582	176.7	59.9	.....	.....	237
Steller sea lion (eastern; GOA-wide)	X	.....	0.059	0.294	160.8	30.3	.....	.....	192
Steller sea lion (eastern; E144)	X	.....	0.221	1.103	603.3	113.5	.....	.....	717
Steller sea lion (eastern; W144)	X	.....	0.001	0.006	3.3	0.6	.....	.....	4
Steller sea lion (western; GOA-wide)	X	.....	0.035	0.176	96.0	18.1	.....	.....	115

TABLE 10—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE GOARA—Continued

Species	Shallow	Deep	Area density (animals/km²) [1]	Volumetric density (animals/km³) [2]	Estimated level B harassment, 0–200 m		Estimated level B harassment, >200 m		Total
					EK60	ES60	EK60	ES60	
Steller sea lion (western; E144)	X		0.003	0.015	7.9	1.5			10
Steller sea lion (western; W144)	X		0.048	0.239	130.7	24.6			156
Harbor seal (Clarence Strait)	X		0.099	0.494	174.6	38.7			214
Harbor seal (Dixon/Cape Decision)	X		0.057	0.283	99.9	22.1			123
Harbor seal (Sitka/Chatham Strait)	X		0.046	0.232	82.0	18.2			101
Harbor seal (Lynn Canal/Stephens Passage)	X		0.030	0.148	52.3	11.6			64
Harbor seal (Glacier Bay/Icy Strait)	X		0.022	0.113	39.8	8.8			49
Harbor seal (Cook Inlet/Shelikof Strait)	X		0.031	0.156	54.9	12.2			68
Harbor seal (Prince William Sound)	X		0.061	0.303	107.2	23.7			131
Harbor seal (South Kodiak)	X		0.022	0.109	38.6	8.5			48
Harbor seal (North Kodiak)	X		0.009	0.472	16.7	3.7			21
Northern elephant seal		X	0.020	0.045	15.9	3.5	28.3	3.6	52

[1] Sources and derivation of marine mammal density information are provided in Table 6–10d of AFSC's application.
[2] Volumetric density estimates derived by dividing area density estimates by 0.2 km (for shallow species) or 0.5 km (for deep species), corresponding with defined depth strata.
[3] The EK60 is not used in areas of Cook Inlet where beluga whales may be present.
[4] Individuals from the California stock of northern fur seals are assumed to occur only east of 144°W.
[5] The EK60 is not used in winter in areas where the northern fur seal may be present.

TABLE 11—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE BSAIRA

Species	Shallow	Deep	Area density (animals/km²) [1]	Volumetric density (animals/km³) [2]	Estimated level B harassment, 0–200 m			Estimated level B harassment, >200 m		Total
					EK60	ES60	7111	EK60	ES60	
North Pacific right whale	X		0.000	0.002	0.1					1
Bowhead whale	X		0.017	0.085	41.5					42
Gray whale	X		0.380	1.900	928.5					929
Humpback whale (CNP)	X		0.018	0.092	45.0					45
Humpback whale (WNP)	X		0.002	0.008	3.9					4
Minke whale	X		0.002	0.011	4.3					5
Sei whale	X		0.000	0.001	0.4					1
Fin whale	X		0.001	0.007	3.4					4
Sperm whale		X	0.008	0.016	6.5	5.5	0.3	4.2	1.9	19
Cuvier's beaked whale		X	0.000	0.000	0.1	0.1	0	0	0	1
Baird's beaked whale		X	0.002	0.003	1.4	1.2	0.1	0.9	0.4	4
Stejneger's beaked whale		X	0.001	0.002	1.0	0.8	0	0.6	0.3	3
Beluga whale (Bristol Bay) [3]	X		0.700	3.500						0
Beluga whale (eastern Bering Sea)	X		0.242	0.484	493.7	419.5	24.9			939
Pacific white-sided dolphin	X		0.005	0.027	11.0	9.4	0.6			21
Killer whale (offshore)	X		0.011	0.055	22.4	19.1	1.1			43
Killer whale (GOA/BSAI transient)	X		0.003	0.013	5.3	4.5	0.3			11
Killer whale (AK resident)	X		0.001	0.005	2.0	1.7	0.1			4
Harbor porpoise (Bering Sea)	X		0.450	2.250	918.1	780.1	46.3			1,745
Dall's porpoise	X		0.033	0.164	79.9	58.8	3.4			143
Northern fur seal (EP—winter) [4]	X		0.075	0.377	18.2					19
Northern fur seal (EP—summer)	X		0.215	1.075	473.6	386.6				861
Steller sea lion (eastern)	X		0.000	0.001	0.2	0.2				1
Steller sea lion (western)	X		0.012	0.060	29.1	21.4				51
Bearded seal	X		0.394	1.968	961.5	707.4				1,669
Harbor seal (Aleutian Islands)	X		0.003	0.014	5.9	5.0				11
Harbor seal (Pribilof Islands)	X		0.000	0.001	0.2	0.2				1
Harbor seal (Bristol Bay)	X		0.015	0.072	29.5	25.1				55
Spotted seal	X		0.601	3.006	1,125.1	827.8				1,953
Ringed seal	X		0.349	1.746	853.3	627.7				1,481

TABLE 11—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE BSAIRA—Continued

Species	Shallow	Deep	Area density (animals/km²) [1]	Volumetric density (animals/km³) [2]	Estimated level B harassment, 0–200 m			Estimated level B harassment, >200 m		Total
					EK60	ES60	7111	EK60	ES60	
Ribbon seal	X		0.241	1.204	450.5	331.4				782

[1] Sources and derivation of marine mammal density information are provided in Table 6–10d of AFSC's application.
[2] Volumetric density estimates derived by dividing area density estimates by 0.2 km (for shallow species) or 0.5 km (for deep species), corresponding with defined depth strata.
[3] Acoustic sources considered in this analysis are not used in areas of Bristol Bay where beluga whales may occur.
[4] The ES60 is not used during winter in BSAIRA.

TABLE 12—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT IN THE CSBSRA

Species	Shallow	Deep	Area density (animals/km²) [1]	Volumetric density (animals/km³) [2]	Estimated level B harassment, 0–200 m	Total
					ES60	
Bowhead whale	X		2.270	11.350		0
Gray whale	X		0.010	0.050		0
Humpback whale (CNP)	X		0.000	0.001		0
Humpback whale (WNP)	X		0.000	0.000		0
Minke whale	X		0.000	0.001		0
Fin whale	X		0.000	0.001		0
Beluga whale (Beaufort Sea)	X		0.008	0.040	3.0	3
Beluga whale (eastern Chukchi Sea)	X		0.008	0.040	3.0	3
Killer whale (GOA/BSAI transient)	X		0.000	0.000	0.003	1
Harbor porpoise (Bering Sea)	X		0.000	0.001	0.03	1
Bearded seal	X		0.175	0.875	58.0	58
Spotted seal	X		0.460	2.302	152.5	153
Ringed seal	X		1.765	8.825	584.6	585
Ribbon seal	X		0.184	0.922	75	62

[1] Sources and derivation of marine mammal density information are provided in Table 6–10d of AFSC's application.
[2] Volumetric density estimates derived by dividing area density estimates by 0.2 km.

Estimated Take Due to Physical Disturbance

Take due to physical disturbance could potentially happen, as it is likely that some pinnipeds will move or flush from known haul-outs into the water in response to the presence or sound of AFSC vessels or researchers. Such events could occur as a result of unintentional approach during survey activity, in the GOARA or BSAIRA only. Physical disturbance would result in no greater than Level B harassment. Behavioral responses may be considered according to the scale shown in Table 13 and based on the method developed by Mortenson (1996). We consider responses corresponding to Levels 2–3 to constitute Level B harassment.

TABLE 13—PINNIPED RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach.
3	Flight	All retreats (flushes) to the water.

The AFSC has estimated potential incidents of Level B harassment due to physical disturbance (Table 14) by considering the number of seals believed to potentially be present at affected haul-outs or rookeries and the number of visits within a certain distance of the haul-out expected to be made by AFSC researchers. AFSC compared haul-out and rookery locations and research survey station and track line locations. Analysis was limited to activities that occurred within a 5-km buffer zone from the shoreline. For point data, a 2-km zone around the point was assumed to represent the extent of the vessel and survey activity around the point. For line data representing the Alaska longline survey and the Gulf of Alaska acoustic pollock survey, a 0.5 nmi (0.9 km) buffer around the line was used to represent the potential interaction area. Take interactions where then tallied if the buffered line or point data from the research activities intersected within a 0.5 nmi buffer zone around any identified rookery or haul-out. When on the basis of this analysis a ''disturbance'' was assumed, the number

of individuals expected to be present at the location are assumed to be disturbed. Number of individuals was determined based on count data for Steller sea lions and based on a density value multiplied by the buffered haul-out area for harbor seals. AFSC does not believe that any research activities would result in physical disturbance of pinnipeds other than Steller sea lions or harbor seals. Similarly, no disturbance is expected of eastern Steller sea lions due to a lack of overlap between known haul-outs or rookeries and research activities.

Although not all individuals on ''disturbed'' haul-outs would necessarily actually be disturbed, and some haul-outs may experience some disturbance at distances greater than expected, we believe that this approach is a reasonable effort towards accounting for this potential source of disturbance. The results are likely overestimates, because some activities may only be one-time, sporadic, or biennial activities, but are assumed to happen on an annual basis.

TABLE 14—ESTIMATED ANNUAL LEVEL B HARASSMENT OF PINNIPEDS ASSOCIATED WITH DISTURBANCE BY RESEARCHERS

Species	Stock	Estimated annual level B harassment
Harbor seal	Clarence Strait	28
	Dixon/Cape Decision	30
	Sitka/Chatham Strait	864
	Lynn Canal/Stephens Passage	45
	Glacier Bay/Icy Strait	20
	Cook Inlet/Shelikof Strait	2,554
	Prince William Sound	3,063
	South Kodiak	3,761
	North Kodiak	885
	Bristol Bay	132
	Pribilof Islands	28
	Aleutian Islands	290
Steller sea lion	Western DPS (GOARA)	3,082
	Western DPS (BSAIRA)	112

Effects of Specified Activities on Subsistence Uses of Marine Mammals

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described in section 8 of the AFSC's application. Measures included in this proposed rulemaking to reduce the impacts of the activity on subsistence uses are described in Appendix B of the AFSC's application. For full details, please see those documents. Last, the information from this section and the Proposed Mitigation section is analyzed to determine whether the necessary findings may be made in the Unmitigable Adverse Impact Analysis and Determination section.

Proposed Mitigation

Under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' However, NMFS's implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses. This analysis will consider such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measure for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, personnel safety, and practicality of implementation.

The following suite of mitigation measures and procedures, *i.e.,* measures taken to monitor, avoid, or minimize the encounter and potential take of marine mammals, will be employed by the AFSC during research cruises and activities. These procedures are the same whether the survey is conducted AFSC, IPHC, or is an AFSC-supported survey, which may be conducted onboard a variety of vessels, *e.g.,* on board a NOAA vessel or charter vessel. The procedures described are based on protocols used during previous research surveys and/or best practices developed for commercial fisheries using similar gear. The AFSC conducts a large variety of research operations, but only activities using trawl, longline, and gillnet gears are expected to present a reasonable likelihood of resulting in incidental take of marine mammals. AFSC's past survey operations have resulted in marine mammal interactions. These protocols are designed to continue the past record of few interactions while providing credible, documented, and safe encounters with observed or captured animals. Mitigation procedures will be focused on those situations where mammals, in the best professional judgement of the vessel operator and Chief Scientist (CS), pose a risk of incidental take. In many instances, the AFSC will use streamlined protocols and training for protected species

developed in collaboration with the North Pacific Groundfish and Halibut Observer Program.

The AFSC has invested significant time and effort in identifying technologies, practices, and equipment to minimize the impact of the proposed activities on marine mammal species and stocks and their habitat. These efforts have resulted in the consideration of many potential mitigation measures, including those the AFSC has determined to be feasible and has implemented in recent years as a standard part of sampling protocols. These measures include the move-on rule mitigation protocol (also referred to in the preamble as the move-on rule), protected species visual watches and use of acoustic pingers on gillnet gear and on surface trawls in southeast Alaska.

Effective monitoring is a key step in implementing mitigation measures and is achieved through regular marine mammal watches. Marine mammal watches are a standard part of conducting AFSC fisheries research activities, particularly those activities that use gears that are known to or potentially interact with marine mammals. Marine mammal watches and monitoring occur during daylight hours prior to deployment of gear (*e.g.,* trawls, gillnets, and longline gear), and they continue until gear is brought back on board. If marine mammals are sighted in the area and are considered to be at risk of interaction with the research gear, then the sampling station is either moved or canceled or the activity is suspended until the marine mammals are no longer in the area. On smaller vessels, the CS and the vessel operator are typically those looking for marine mammals and other protected species. When marine mammal researchers are on board (distinct from marine mammal observers dedicated to monitoring for potential gear interactions), they will record the estimated species and numbers of animals present and their behavior using protocols similar or adapted from the North Pacific Groundfish and Halibut Observer Program. If marine mammal researchers are not on board or available, then the CS in cooperation with the vessel operator will monitor for marine mammals and provide training as practical to bridge crew and other crew to observe and record such information. Because marine mammals are frequently observed in Alaskan waters, marine mammal observations may be limited to those animals that directly interact with or are near to the vessel or gear. NOAA vessels, chartered vessels, and affiliated vessels or studies are required to monitor interactions with marine mammals but are limited to reporting direct interactions, dead animals, or entangled whales.

General Measures

Coordination and Communication—When AFSC survey effort is conducted aboard NOAA-owned vessels, there are both vessel officers and crew and a scientific party. Vessel officers and crew are not composed of AFSC staff but are employees of NOAA's Office of Marine and Aviation Operations (OMAO), which is responsible for the management and operation of NOAA fleet ships and aircraft and is composed of uniformed officers of the NOAA Commissioned Corps as well as civilians. The ship's officers and crew provide mission support and assistance to embarked scientists, and the vessel's Commanding Officer (CO) has ultimate responsibility for vessel and passenger safety and, therefore, decision authority. When AFSC survey effort is conducted aboard cooperative platforms (*i.e.,* non-NOAA vessels), ultimate responsibility and decision authority again rests with non-AFSC personnel (*i.e.,* vessel's master or captain). Decision authority includes the implementation of mitigation measures (*e.g.,* whether to stop deployment of trawl gear upon observation of marine mammals). The scientific party involved in any AFSC survey effort is composed, in part or whole, of AFSC staff and is led by a CS. Therefore, because the AFSC—not OMAO or any other entity that may have authority over survey platforms used by AFSC—is the applicant to whom any incidental take authorization issued under the authority of these proposed regulations would be issued, we require that the AFSC take all necessary measures to coordinate and communicate in advance of each specific survey with OMAO, or other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve description of all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. AFSC will coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (CO/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The CS will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

As described previously, for IPHC longline survey operations, applicable mitigation, monitoring, and reporting requirements would be conveyed from the AFSC to the IPHC via Letters of Acknowledgement issued by the AFSC pursuant to the MSA. Although IPHC survey effort is not conducted aboard NOAA platforms, the same communication and coordination requirements would apply to IPHC surveys.

Vessel Speed—Vessel speed during active sampling rarely exceeds 5 kn, with typical speeds being 2–4 kn. Transit speeds vary from 6–14 kn but average 10 kn. These low vessel speeds minimize the potential for ship strike (see ''Potential Effects of the Specified Activity on Marine Mammals and Their Habitat'' for an in-depth discussion of ship strike). In addition, when research vessels are operating in areas and times where greater risk is expected due to marine mammal presence, *e.g.,* Seguam Pass during humpback whale migration, additional crew are brought up to the bridge to monitor for whales. In such cases vessel captains may also reduce speed to improve the chances of observing whales and avoiding them. At any time during a survey or in transit, if a crew member or designated marine mammal observer standing watch sights marine mammals that may intersect with the vessel course that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

Other Gears—The AFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (*e.g.,* plankton nets, video camera and ROV deployments) are not considered to pose any risk to marine mammals and are therefore not subject to specific mitigation measures. However, at all times when the AFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

Handling Procedures—Handling procedures are those taken to return a live animal to the sea or process a dead animal. The AFSC will implement a number of handling protocols to

minimize potential harm to marine mammals that are incidentally taken during the course of fisheries research activities. In general, protocols have already been prepared for use on commercial fishing vessels; these have been adapted from the North Pacific Fishery Observer Manual. These procedures are expected to increase post-release survival and, in general, following a ''common sense'' approach to handling captured or entangled marine mammals will present the best chance of minimizing injury to the animal and of decreasing risks to scientists and vessel crew. Handling or disentangling marine mammals carries inherent safety risks, and using best professional judgment and ensuring human safety is paramount.

Captured live or injured marine mammals are released from research gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals are released without removing them from the water if possible and data collection is conducted in such a manner as not to delay release of the animal(s) or endanger the crew. AFSC staff will be instructed on how to identify different species; handle and bring marine mammals aboard a vessel; assess the level of consciousness; remove fishing gear; and return marine mammals to water. For further information regarding proposed handling procedures, please see section 11.7 of AFSC's application.

Other Measures—AFSC scientists are aware of the need to prevent or minimize disturbance of marine mammals when operating vessels nearshore around pinniped rookeries and haul-outs, and other places where marine mammals are aggregated. Minimum approaches shall be not less than 1 km from the aggregation area.

Trawl Survey Visual Monitoring and Operational Protocols

Visual monitoring protocols, described above, are an integral component of trawl mitigation protocols. Observation of marine mammal presence and behaviors in the vicinity of AFSC trawl survey operations allows for the application of professional judgment in determining the appropriate course of action to minimize the incidence of marine mammal gear interactions.

The OOD, CS or other designated member of the scientific party, and crew standing watch on the bridge visually scan surrounding waters with the naked eye and rangefinding binoculars (or monocular) for marine mammals prior to, during, and until all trawl operations are completed. Some sets may be made at night or other limited visibility conditions, when visual observation may be conducted using the naked eye and available vessel lighting with limited effectiveness.

Most research vessels engaged in trawling will have their station in view for 15 minutes or 2 nmi prior to reaching the station, depending upon the sea state and weather. Many vessels will inspect the tow path before deploying the trawl gear, adding another 15 minutes of observation time and gear preparation prior to deployment. Lookouts immediately alert the OOD and CS as to their best estimate of the species and number of animals observed and any observed animal's distance, bearing, and direction of travel relative to the ship's position. If any marine mammals are sighted around the vessel before setting gear, the vessel may be moved away from the animals to a different section of the sampling area if the animals appear to be at risk of interaction with the gear. This is what is referred to as the ''move-on'' rule.

If marine mammals are observed at or near the station, the CS and the vessel operator will determine the best strategy to avoid potential takes based on the species encountered, their numbers and behavior, their position and vector relative to the vessel, and other factors. For instance, a whale transiting through the area and heading away from the vessel may not require any move, or may require only a short move from the initial sampling site, while a pod of dolphins gathered around the vessel may require a longer move from the initial sampling site or possibly cancellation of the station if the dolphins follow the vessel. After moving on, if marine mammals are still visible from the vessel and appear to be at risk, the CS may decide, in consultation with the vessel operator, to move again or to skip the station. In many cases, the survey design can accommodate sampling at an alternate site. In most cases, gear is not deployed if marine mammals have been sighted from the ship in its approach to the station unless those animals do not appear to be in danger of interactions with the gear, as determined by the judgment of the CS and vessel operator. The efficacy of the ''move-on'' rule is limited during night time or other periods of limited visibility; although operational lighting from the vessel illuminates the water in the immediate vicinity of the vessel during gear setting and retrieval. In these cases, it is again the judgment of the CS as based on experience and in consultation with the vessel operator to exercise due diligence and to decide on appropriate course of action to avoid unintentional interactions.

Once the trawl net is in the water, the OOD, CS or other designated scientist, and/or crew standing watch continue to monitor the waters around the vessel and maintain a lookout for marine mammals as environmental conditions allow (as noted previously, visibility can be limited for various reasons). If marine mammals are sighted before the gear is fully retrieved, the most appropriate response to avoid incidental take is determined by the professional judgment of the OOD, in consultation with the CS and vessel operator as necessary. These judgments take into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course. If marine mammals are sighted during haul-back operations, there is the potential for entanglement during retrieval of the net, especially when the trawl doors have been retrieved and the net is near the surface and no longer under tension. The risk of catching an animal may be reduced if the trawling continues and the haul-back is delayed until after the marine mammal has lost interest in the gear or left the area. The appropriate course of action to minimize the risk of incidental take is determined by the professional judgment of the OOD, vessel operator, and the CS based on all situation variables, even if the choices compromise the value of the data collected at the station. We recognize that it is not possible to dictate in advance the exact course of action that the OOD or CS should take in any given event involving the presence of marine mammals in proximity to an ongoing trawl tow, given the sheer number of potential variables, combinations of variables that may determine the appropriate course of action, and the need to prioritize human safety in the operation of fishing gear at sea. Nevertheless, we require a full accounting of factors that shape both successful and unsuccessful decisions, and these details will be fed back into AFSC training efforts and ultimately help to refine the best professional judgment that determines the course of action taken in any given scenario (see further discussion in ''Proposed Monitoring and Reporting'').

If trawling operations have been suspended because of the presence of marine mammals, the vessel will resume trawl operations (when practicable) only when the animals are

believed to have departed the area. This decision is at the discretion of the OOD/CS and is dependent on the situation.

Standard survey protocols that are expected to lessen the likelihood of marine mammal interactions include standardized tow durations and distances. Standard bottom trawl tow durations of not more than 15–30 minutes at the target depth will typically be implemented, excluding deployment and retrieval time, to reduce the likelihood of attracting and incidentally taking marine mammals. Short tow durations, and the resulting short tow distances (typically 1–2 nmi), decrease the opportunity for marine mammals to find the vessel and investigate. The scientific crew will avoid dumping previous catches when the net is being retrieved, especially when the net is at the surface at the trawl alley. This practice of dumping fish when the net is near the vessel may train marine mammals to expect food when the net is retrieved and may capture the protected species.

In operations in areas of southeast Alaska deploying surface nets, several additional measures have been employed to minimize the likelihood of marine mammal encounters, including no offal discard prior to or during the trawling at a station, trawling of short duration and seldom at night, no trawling less than one kilometer from pinniped rookeries or haul-outs, and deployment of acoustic pingers attached on the trawl foot or head ropes. Pingers are acoustic deterrents that are intended to deter the presence of marine mammals and therefore decrease the probability of entanglement or unintended capture of marine mammals.

Acoustic Deterrent Devices—Acoustic deterrent devices (pingers) are underwater sound-emitting devices that have been shown to decrease the probability of interactions with certain species of marine mammals when fishing gear is fitted with the devices. Multiple studies have reported large decreases in harbor porpoise mortality (approximately eighty to ninety percent) in bottom-set gillnets (nets composed of vertical panes of netting, typically set in a straight line and either anchored to the bottom or drifting) during controlled experiments (*e.g.,* Kraus *et al.,* 1997; Trippel *et al.,* 1999; Gearin *et al.,* 2000). Using commercial fisheries data rather than a controlled experiment, Palka *et al.* (2008) reported that harbor porpoise bycatch rates in the northeast U.S gillnet fishery when fishing without pingers was about two to three times higher compared to when pingers were used. After conducting a controlled experiment in a California drift gillnet fishery during 1996–97, Barlow and Cameron (2003) reported significantly lower bycatch rates when pingers were used for all cetacean species combined, all pinniped species combined, and specifically for short-beaked common dolphins (85 percent reduction) and California sea lions (69 percent reduction). While not a statistically significant result, catches of Pacific white-sided dolphins were reduced by seventy percent. Carretta *et al.* (2008) subsequently examined nine years of observer data from the same drift gillnet fishery and found that pinger use had eliminated beaked whale bycatch. Carretta and Barlow (2011) assessed the long-term effectiveness of pingers in reducing marine mammal bycatch in the California drift gillnet fishery by evaluating fishery data from 1990–2009 (with pingers in use beginning in 1996), finding that bycatch rates of cetaceans were reduced nearly fifty percent in sets using a sufficient number of pingers. However, in contrast to the findings of Barlow and Cameron (2003), they report no significant difference in pinniped bycatch.

To be effective, a pinger must emit a signal that is sufficiently aversive to deter the species of concern, which requires that the signal is perceived while also deterring investigation. In rare cases, aversion may be learned as a warning when an animal has survived interaction with gear fitted with pingers (Dawson, 1994). The mechanisms by which pingers work in operational settings are not fully understood, but field trials and captive studies have shown that sounds produced by pingers are aversive to harbor porpoises (*e.g.,* Laake *et al.,* 1998; Kastelein *et al.,* 2000; Culik *et al.,* 2001), and it is assumed that when marine mammals are deterred from interacting with gear fitted with pingers that it is because the sounds produced by the devices are aversive. Two primary concerns expressed with regard to pinger effectiveness in reducing marine mammal bycatch relate to habituation (*i.e.,* marine mammals may become habituated to the sounds made by the pingers, resulting in increasing bycatch rates over time; Dawson, 1994; Cox *et al.,* 2001; Carlström *et al.,* 2009) and the ''dinner bell effect'' (Dawson, 1994; Richardson *et al.,* 1995), which implies that certain predatory marine mammal species (*e.g.,* sea lions) may come to associate pingers with a food source (*e.g.,* fish caught in nets) with the result that bycatch rates may be higher in nets with pingers than in those without.

Palka *et al.* (2008) report that habituation has not occurred on a level that affects the bycatch estimate for the northeast U.S. gillnet fishery, while cautioning that the data studied do not provide a direct method to study habituation. Similarly, Carretta and Barlow (2011) report that habituation is not apparent in the California drift gillnet fishery, with the proportion of pinger-fitted sets with bycatch not significantly different for either cetaceans or pinnipeds between the periods 1996–2001 and 2001–09; in fact, bycatch rates for both taxa overall were lower in the latter period. We are not aware of any long-term behavioral studies investigating habituation. Bycatch rates of California sea lions, specifically, did increase during the latter period. However, the authors do not attribute the increase to pinger use (*i.e.,* the ''dinner bell effect''); rather, they believe that continuing increases in population abundance for the species (Carretta *et al.,* 2017) coincident with a decline in fishery effort are responsible for the increased rate of capture. Despite these potential limitations on the effectiveness of pingers, and while effectiveness has not been tested on trawl gear, we believe that the available evidence supports an assumption that use of pingers is likely to reduce the potential for marine mammal interactions with AFSC surface trawl gear in southeast Alaska.

If one assumes that use of a pinger is effective in deterring marine mammals from interacting with fishing gear, one must therefore assume that receipt of the acoustic signal has a disturbance effect on those marine mammals (*i.e.,* Level B harassment). However, Level B harassment that may be incurred as a result of AFSC use of pingers does not constitute take that must be authorized under the MMPA. The MMPA prohibits the taking of marine mammals by U.S. citizens or within the U.S. EEZ unless such taking is appropriately permitted or authorized. However, the MMPA provides several narrowly defined exemptions from this requirement (*e.g.,* for Alaskan natives; for defense of self or others; for Good Samaritans (16 U.S.C. 1371(b)–(d))). Section 109(h) of the MMPA (16 U.S.C. 1379(h)) allows for the taking of marine mammals in a humane manner by Federal, state, or local government officials or employees in the course of their official duties if the taking is necessary for the protection or welfare of the mammal, the protection of the public health and welfare, or the non-lethal removal of nuisance animals. AFSC use of pingers as a deterrent device, which may cause Level B harassment of marine mammals, is intended solely for the avoidance of

potential marine mammal interactions with AFSC research gear (*i.e.,* avoidance of Level A harassment, serious injury, or mortality). Therefore, use of such deterrent devices, and the taking that may result, is for the protection and welfare of the mammal and is covered explicitly under MMPA section 109(h)(1)(A). Potential taking of marine mammals resulting from AFSC use of pingers is not discussed further in this document.

As described above, pingers (10 kHz, 132 dB, 300 ms every 4 s) would be deployed on surface trawl nets deployed in southeast Alaska. Pingers would also be deployed on gillnets. Please see ''Marine Mammal Hearing'' below for reference to functional and best hearing ranges for marine mammals.

Longline Survey Visual Monitoring and Operational Protocols

Visual monitoring requirements for all longline surveys are similar to the general protocols described above for trawl surveys. Please see that section for full details of the visual monitoring protocol and the move-on rule mitigation protocol. In summary, requirements for longline surveys are to: (1) Conduct visual monitoring prior to arrival on station; (2) implement the move-on rule if marine mammals are observed within the area around the vessel and may be at risk of interacting with the vessel or gear; (3) deploy gear as soon as possible upon arrival on station (depending on presence of marine mammals); and (4) maintain visual monitoring effort throughout deployment and retrieval of the longline gear. As was described for trawl gear, the OOD, CS, or watch leader will use best professional judgment to minimize the risk to marine mammals from potential gear interactions during deployment and retrieval of gear. If marine mammals are detected during setting operations and are considered to be at risk, immediate retrieval or suspension of operations may be warranted. If operations have been suspended because of the presence of marine mammals, the vessel will resume setting (when practicable) only when the animals are believed to have departed the area. If marine mammals are detected during retrieval operations and are considered to be at risk, haul-back may be postponed. These decisions are at the discretion of the OOD/CS and are dependent on the situation.

As for trawl surveys, some standard survey protocols are expected to minimize the potential for marine mammal interactions. Soak times are typically short relative to commercial fishing operations, measured from the time the last hook is in the water to when the first hook is brought out of the water. AFSC longline protocols specifically prohibit chumming (releasing additional bait to attract target species to the gear). Spent bait and offal are discarded away from the longline retrieval area but not retained until completion of longline retrieval. Due to the volume of fish caught with each set and the length of time it takes to retrieve the longline (up to eight hours), the retention of spent bait and offal until the gear is completely retrieved is not possible.

Whales, particularly killer whales in the Bering Sea and sperm whales in the Gulf of Alaska, are commonly attracted to longline fishing operations and have learned how to remove fish from longline gear as it is retrieved. Such depredation of fish off the longline by whales can significantly affect catch rate and species composition of data collected by the survey. The effect of depredation activity on survey results has been a research subject for many years and many aspects are therefore recorded as part of normal survey protocols, including the amount of catch potentially depredated (percent of empty hooks or damaged fish), number of whales visible, behavior of whales, whale proximity to the vessel, and any whale/vessel interactions. Sperm whale depredation can be difficult to determine because they can alternate between diving deep to depredate the line and swimming at the surface eating offal (see below). The presence of sperm whales at the surface does not mean they are actively depredating the line.

The Alaska Longline Survey uses bottom longline gear with a 16-km mainline. Sets are made in the morning if no killer whales or sperm whales are present and the longline gear is allowed to soak for three hours before haul-back begins. Due to the length of the mainline and numbers of hooks involved, it takes up to eight hours to complete the haul-back. Whales have learned to associate particular sounds with longline operations and typically arrive on scene as the gear is being retrieved. Efforts have been made to avoid depredation by allowing the line to sink back down but such strategies have proved impractical as whales can wait in the area for days and fish caught on the line are then eaten by other demersal marine organisms. The only practical way to minimize depredation if whales find the vessel is to continue retrieving the gear as quickly as possible. As killer whales may also follow the survey vessel between stations, the station order has been altered to disrupt the survey pattern as a means to dissuade the animals from this behavior and to avoid continued interactions.

Gillnet Survey Visual Monitoring and Operational Protocols

Visual monitoring and operational protocols for gillnet surveys are similar to those described previously for trawl surveys, with a focus on visual observation in the survey area and avoidance of marine mammals that may be at risk of interaction with survey vessels or gear. Gillnets are not deployed if marine mammals have been sighted on arrival at the sample site. The exception is for animals that, because of their behavior, travel vector or other factors, do not appear to be at risk of interaction with the gillnet gear. If no marine mammals are present, the gear is set and monitored continuously during the soak. If a marine mammal is sighted during the soak and appears to be at risk of interaction with the gear, then the gear is pulled immediately. As noted above, pingers would be deployed on gillnets, which are used only at the Little Port Walter Research Station in southeast Alaska and in Prince William Sound.

We have carefully evaluated the AFSC's proposed mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS's MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals.

Monitoring and reporting requirements prescribed by NMFS

should contribute to improved understanding of one or more of the following:

- Occurrence of significant interactions with marine mammal species in action area (*e.g.,* animals that came close to the vessel, contacted the gear, or are otherwise rare or displaying unusual behavior).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

AFSC plans to make more systematic its training, operations, data collection, animal handling and sampling protocols, etc. in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. It is in this spirit that we propose the monitoring requirements described below.

Visual Monitoring

Marine mammal watches are a standard part of conducting fisheries research activities, and are implemented as described previously in ''Proposed Mitigation.'' Dedicated marine mammal visual monitoring occurs as described (1) for some period prior to deployment of most research gear; (2) throughout deployment and active fishing of all research gears; (3) for some period prior to retrieval of longline gear; and (4) throughout retrieval of all research gear. This visual monitoring is performed by trained AFSC personnel or other trained crew during the monitoring period. Observers record the species and estimated number of animals present and their behaviors, which may be valuable information towards an understanding of whether certain species may be attracted to vessels or certain survey gears. Separately, marine mammal watches are conducted by watch-standers (those navigating the vessel and other crew; these will typically not be AFSC personnel) at all times when the vessel is being operated. The primary focus for this type of watch is to avoid striking marine mammals and to generally avoid navigational hazards. These watch-standers typically have other duties associated with navigation and other vessel operations and are not required to record or report to the scientific party data on marine mammal sightings, except when gear is being deployed or retrieved.

AFSC will also monitor disturbance of hauled-out pinnipeds resulting from the presence of researchers, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance will be recorded according to the three-point scale, representing increasing seal response to disturbance, shown in Table 13.

Training

AFSC anticipates that additional information on practices to avoid marine mammal interactions can be gleaned from training sessions and more systematic data collection standards. The AFSC will conduct annual trainings for all chief scientists and other personnel who may be responsible for conducting marine mammal visual observations or handling incidentally captured marine mammals to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations, completion of datasheets, and use of equipment. Some of these topics may be familiar to AFSC staff, who may be professional biologists; the AFSC shall determine the agenda for these trainings and ensure that all relevant staff have necessary familiarity with these topics. The AFSC will work with the North Pacific Fisheries Groundfish and Halibut Observer Program to customize a new training program. The first such training will include three primary elements: (1) An overview of the purpose and need for the authorization, including mandatory mitigation measures by gear and the purpose for each, and species that AFSC is authorized to incidentally take; (2) detailed descriptions of reporting, data collection, and sampling protocols; and (3) discussion of best professional judgment (which is recognized as an integral component of mitigation implementation; see ''Proposed Mitigation'').

The second topic will include instruction on how to complete new data collection forms such as the marine mammal watch log, the incidental take form (*e.g.,* specific gear configuration and details relevant to an interaction with protected species), and forms used for species identification and biological sampling.

The third topic will include use of professional judgment in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful. We recognize that many factors come into play regarding decision-making at sea and that it is not practicable to simplify what are inherently variable and complex situational decisions into rules that may be defined on paper. However, it is our intent that use of best professional judgment be an iterative process from year to year, in which any at-sea decision-maker (*i.e.,* responsible for decisions regarding the avoidance of marine mammal interactions with survey gear through the application of best professional judgment) learns from the prior experience of all relevant AFSC personnel (rather than from solely their own experience). The outcome should be increased transparency in decision-making processes where best professional judgment is appropriate and, to the extent possible, some degree of standardization across common situations, with an ultimate goal of reducing marine mammal interactions. It is the responsibility of the AFSC to facilitate such exchange.

Handling Procedures and Data Collection

Improved standardization of handling procedures were discussed previously in ''Proposed Mitigation.'' In addition to the benefits implementing these protocols are believed to have on the animals through increased post-release survival, AFSC believes adopting these protocols for data collection will also increase the information on which ''serious injury'' determinations (NMFS, 2012a, 2012b) are based and improve scientific knowledge about marine mammals that interact with fisheries research gears and the factors that contribute to these interactions. AFSC personnel will be provided standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the

level of consciousness, remove fishing gear, return an individual to water and log activities pertaining to the interaction.

AFSC will record interaction information on their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines (NMFS, 2012a, 2012b), researchers will also answer a series of supplemental questions on the details of marine mammal interactions.

Finally, for any marine mammals that are killed during fisheries research activities, scientists will collect data and samples pursuant to Appendix D of the AFSC DEA, ''Protected Species Mitigation and Handling Procedures for AFSC Fisheries Research Vessels.''

Reporting

As is normally the case, AFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. The AFSC will follow a phased approach with regard to the cessation of its activities and/or reporting of such events, as described in the proposed regulatory texts following this preamble. In addition, Chief Scientists (or cruise leader, CS) will provide reports to AFSC leadership and to the Office of Protected Resources (OPR). As a result, when marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling AFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The AFSC will submit annual summary reports to OPR including: (1) Annual line-kilometers surveyed during which the EK60, ME70, ES60, 7111 (or equivalent sources) were predominant (see ''Estimated Take by Acoustic Harassment'' for further discussion), specific to each region; (2) summary information regarding use of all longline, gillnet, and trawl gear, including number of sets, tows, etc., specific to each research area and gear; (3) accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why; (4) summary information related to any disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to the three-point scale shown in Table 13, and distance of closest approach; and (5) a written evaluation of the effectiveness of AFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any. The period of reporting will be annually, beginning one year post-issuance of any LOA, and the report must be submitted not less than ninety days following the end of a given year. Submission of this information is in service of an adaptive management framework allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the proposed five-year period of validity for these regulations.

NMFS has established a formal incidental take reporting system, the Protected Species Incidental Take (PSIT) database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS leadership and other relevant staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been inputted to the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc.

AFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for marine mammals that are released alive. AFSC will require that the CS complete data forms and address supplemental questions, both of which have been developed to aid in SI determinations. AFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the AFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

Negligible Impact Analysis and Determination

Introduction—NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, and specific consideration of take by M/SI previously authorized for other NMFS research activities).

We note here that the takes from potential gear interactions enumerated below could result in non-serious injury, but their worse potential outcome (mortality) is analyzed for the purposes of the negligible impact determination. We discuss here the connection between the mechanisms for authorizing incidental take under section 101(a)(5) for activities, such as AFSC's research activities, and for authorizing incidental take from commercial fisheries. In 1988, Congress amended the MMPA's provisions for addressing incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to develop a system suited to the unique circumstances of commercial fishing operations led NMFS to suggest a new conceptual means and associated regulatory framework. That concept, Potential Biological Removal (PBR), and

a system for developing plans containing regulatory and voluntary measures to reduce incidental take for fisheries that exceed PBR were incorporated as sections 117 and 118 in the 1994 amendments to the MMPA.

PBR is defined in the MMPA (16 U.S.C. 1362(20)) as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, and is a measure to be considered when evaluating the effects of M/SI on a marine mammal species or stock. Optimum sustainable population (OSP) is defined by the MMPA (16 U.S.C. 1362(9)) as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. A primary goal of the MMPA is to ensure that each species or stock of marine mammal is maintained at or returned to its OSP.

PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time, and is the product of factors relating to the minimum population estimate of the stock (N_{min}); the productivity rate of the stock at a small population size; and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of N_{min} incorporates the precision and variability associated with abundance information and is intended to provide reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.,* 1995). In general, the three factors are developed on a stock-specific basis in consideration of one another in order to produce conservative PBR values that appropriately account for both imprecision that may be estimated as well as potential bias stemming from lack of knowledge (Wade, 1998).

PBR can be used as a consideration of the effects of M/SI on a marine mammal stock but was applied specifically to work within the management framework for commercial fishing incidental take. PBR cannot be applied appropriately outside of the section 118 regulatory framework for which it was designed without consideration of how it applies in section 118 and how other statutory management frameworks in the MMPA differ. PBR was not designed as an absolute threshold limiting commercial fisheries, but rather as a means to evaluate the relative impacts of those activities on marine mammal stocks. Even where commercial fishing is causing M/SI at levels that exceed PBR, the fishery is not suspended. When M/SI exceeds PBR, NMFS may develop a take reduction plan, usually with the assistance of a take reduction team. The take reduction plan will include measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below the stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather utilizes the take reduction process to further mitigate the effects of fishery activities via additional bycatch reduction measures. PBR is not used to grant or deny authorization of commercial fisheries that may incidentally take marine mammals.

Similarly, to the extent consideration of PBR may be relevant to considering the impacts of incidental take from activities other than commercial fisheries, using it as the sole reason to deny incidental take authorization for those activities would be inconsistent with Congress's intent under section 101(a)(5) and the use of PBR under section 118. The standard for authorizing incidental take under section 101(a)(5) continues to be, among other things, whether the total taking will have a negligible impact on the species or stock. When Congress amended the MMPA in 1994 to add section 118 for commercial fishing, it did not alter the standards for authorizing non-commercial fishing incidental take under section 101(a)(5), acknowledging that negligible impact under section 101(a)(5) is a separate standard from PBR under section 118. In fact, in 1994 Congress also amended section 101(a)(5)(E) (a separate provision governing commercial fishing incidental take for species listed under the Endangered Species Act) to add compliance with the new section 118 but kept the requirement for a negligible impact finding, showing that the determination of negligible impact and application of PBR may share certain features but are different.

Since the introduction of PBR, NMFS has used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA. The MMPA requires that PBR be estimated in stock assessment reports and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.,* the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is ''strategic'' (16 U.S.C. 1362(19))), but nothing in the MMPA requires the application of PBR outside the management of commercial fisheries interactions with marine mammals.

Nonetheless, NMFS recognizes that as a quantitative metric, PBR may be useful in certain instances as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI caused by activities authorized under 101(a)(5)(A) on marine mammal stocks. As noted by NMFS and the USFWS in our implementation regulations for the 1986 amendments to the MMPA (54 FR 40341, September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to OSP (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown, the size and distribution of the population, and existing impacts and environmental conditions. To specifically use PBR, along with other factors, to evaluate the effects of M/SI, we first calculate a metric for each species or stock that incorporates information regarding ongoing anthropogenic M/SI into the PBR value (*i.e.,* PBR minus the total annual anthropogenic mortality/serious injury estimate), which is called ''residual PBR'' (Wood *et al.,* 2012). We then consider how the anticipated potential incidental M/SI from the activities being evaluated compares to residual PBR. Anticipated or potential M/SI that exceeds residual PBR is considered to have a higher likelihood of adversely affecting rates of recruitment or survival, while anticipated M/SI that is equal to or less than residual PBR has a lower likelihood (both examples given without consideration of other types of take, which also factor into a negligible impact determination). In such cases where the anticipated M/SI is near, at, or above residual PBR, consideration of other factors, including those outlined above as well as mitigation and other factors (positive or negative), is especially important to assessing whether the M/SI will have a negligible impact on the stock. As described above, PBR is a conservative metric and

is not intended to be used as a solid cap on mortality—accordingly, impacts from M/SI that exceed residual PBR may still potentially be found to be negligible in light of other factors that offset concern, especially when robust mitigation and adaptive management provisions are included.

Alternately, for a species or stock with incidental M/SI less than 10 percent of residual PBR, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI that alone (*i.e.,* in the absence of any other take) cannot affect annual rates of recruitment and survival. In a prior incidental take rulemaking and in the commercial fishing context, this threshold is identified as the significance threshold, but it is more accurately an insignificance threshold outside commercial fishing because it represents the level at which there is no need to consider other factors in determining the role of M/SI in affecting rates of recruitment and survival. Assuming that any additional incidental take by harassment would not exceed the negligible impact level, the anticipated M/SI caused by the activities being evaluated would have a negligible impact on the species or stock. This 10 percent was identified as a workload simplification consideration to avoid the need to provide unnecessary additional information when the conclusion is relatively obvious; but as described above, values above 10 percent have no particular significance associated with them until and unless they approach residual PBR.

Our evaluation of the M/SI for each of the species and stocks for which mortality could occur follows. In addition, all mortality authorized for some of the same species or stocks over the next several years pursuant to our final rulemakings for the NMFS Southwest Fisheries Science Center and the NMFS Northwest Fisheries Science Center has been incorporated into the residual PBR.

We first consider maximum potential incidental M/SI for each stock (Table 6) in consideration of NMFS's threshold for identifying insignificant M/SI take (10 percent of residual PBR (69 FR 43338; July 20, 2004)). By considering the maximum potential incidental M/SI in relation to PBR and ongoing sources of anthropogenic mortality, we begin our evaluation of whether the potential incremental addition of M/SI through AFSC research activities may affect the species' or stock's annual rates of recruitment or survival. We also consider the interaction of those mortalities with incidental taking of that species or stock by harassment pursuant to the specified activity.

Summary of Estimated Incidental Take

Here we provide a summary of the total proposed incidental take authorization on an annual basis, as well as other information relevant to the negligible impact analysis. Table 15 shows information relevant to our negligible impact analysis concerning the total annual taking that could occur for each stock from NMFS' scientific research activities when considering incidental take previously authorized for SWFSC (80 FR 58982; September 30, 2015) and take proposed for authorization for NWFSC (81 FR 38516; June 13, 2016) and AFSC. Scientific research activities conducted by the SWFSC and/or NWFSC may impact the same populations of marine mammals expected to be impacted by IPHC survey activities occurring off of the U.S. west coast. We propose to authorize take by M/SI over the five-year period of validity for these proposed regulations as indicated in Table 15 below. For the purposes of the negligible impact analysis, we assume that all of these takes could potentially be in the form of M/SI; PBR is not appropriate for direct assessment of the significance of harassment.

For some stocks, a range is provided in the ''Total M/SI Authorization'' columns of Table 15 (below). In these cases, the worst case potential outcome is used to derive the value presented in the ''Estimated Maximum Annual M/SI'' column (Table 15, below). For example, we present ranges of 13–18 and 3–8 as the total take authorization proposed over five years for the eastern Pacific and California stocks of northern fur seal, respectively. These ranges reflect that, as part of the overall proposed take authorization for AFSC, a total of five takes of northern fur seals are expected to occur as a result specifically of IPHC longline operations. These five takes are considered as potentially accruing to either stock; therefore, we assess the consequences of the proposed take authorization for these stocks as though the maximum could occur to both. The ten total takes expected to potentially occur as a result of SWFSC and/or NWFSC survey operations could also occur to individuals from either stock. Similarly, we assume that IPHC survey operations specifically could result in incidental take of up to five harbor seals over the five years, and that these takes could occur for any stock of harbor seal (but that no more than one take would be expected from any given stock). Therefore, although only five takes are expected from IPHC activities, we assume that one take accrues to each of the 17 harbor seal stocks that may overlap with the IPHC surveys. For the NWFSC, we assumed that nine total takes of harbor seal could occur over five years, and that these takes could occur to either the California or Oregon/Washington coast stocks. Over five years, six total takes were expected to result from NWFSC/SWFSC survey operations within Washington inland waters—potentially occurring to any of the three stocks of harbor seals occurring in those waters. The value presented for ''Estimated Maximum Annual M/SI'' for each stock reflects these considerations. Similar considerations result in the ranges given for Steller sea lions (Table 15). This stock-specific accounting does not change our expectations regarding the combined total number of takes that would actually occur for each stock, but informs our stock-specific negligible impact analysis.

We previously authorized take of marine mammals incidental to fisheries research operations conducted by the SWFSC (see 80 FR 58982 and 80 FR 68512), and proposed to authorize take incidental to fisheries research operations conducted by the NWFSC (see 81 FR 38516). This take would occur to some of the same stocks for which we propose to authorize take incidental to AFSC fisheries research operations. Therefore, in order to evaluate the likely impact of the take by M/SI proposed for authorization in this rule, we consider not only other ongoing sources of human-caused mortality but the potential mortality authorized or proposed for authorization for SWFSC/NWFSC. As used in this document, other ongoing sources of human-caused (anthropogenic) mortality refers to estimates of realized or actual annual mortality reported in the SARs and does not include authorized or unknown mortality. Below, we consider the total taking by M/SI proposed for authorization for AFSC and previously authorized or proposed for authorization for SWFSC/NWFSC together to produce a maximum annual M/SI take level (including take of unidentified marine mammals that could accrue to any relevant stock) and compare that value to the stock's PBR value, considering ongoing sources of anthropogenic mortality (as described in footnote 4 of Table 15 and in the following discussion). PBR and annual M/SI values considered in Table 15 reflect the most recent information available (*i.e.,* final 2016 SARs).

TABLE 15—SUMMARY INFORMATION RELATED TO AFSC PROPOSED ANNUAL TAKE AUTHORIZATION, 2018–23

Species [1]	Stock	Proposed total annual Level B harassment authorization [2]	Percent of estimated population abundance	Proposed AFSC/IPHC total M/SI authorization, 2018–23 [3]	SWFSC/ NWFSC total M/SI authorization	Estimated maximum annual M/SI [4]	PBR minus annual M/SI (%) [5]	Stock trend [6]
North Pacific right whale	ENP	2	6.5	0	0	0	n/a	?
Bowhead whale	Western Arctic	42	0.2	0	0	0	n/a	↑
Gray whale	ENP	5,579	26.6	0	0	0	n/a	→
Humpback whale	CNP	161	1.6	0	0	0	n/a	↑
	WNP	6	0.5	0	0	0	n/a	↑
Minke whale	Alaska	8	0.2 [8]	0	0	0	n/a	?
Sei whale	ENP	2	0.4	0	0	0	n/a	↑
Fin whale	Northeast Pacific	40	3.9 [8]	0	0	0	n/a	↑
Blue whale	ENP	1	0.1	0	0	0	n/a	→
Sperm whale	North Pacific	22	Unknown	2	0	0.4	?	?
Cuvier's beaked whale	Alaska	2	Unknown	0	0	0	n/a	?
Baird's beaked whale	Alaska	8	Unknown	0	0	0	n/a	?
Stejneger's beaked whale	Alaska	15	Unknown	0	0	0	n/a	?
Beluga whale	Beaufort Sea	3	0.0	1	0	0.2	510 (0.0)	↑ or →
	Eastern Chukchi Sea	3	0.1	1	0	0.2	177 (0.1)	?
	Eastern Bering Sea	939	4.9	0	0	0	n/a	?
	Bristol Bay	0	n/a	0	0	0	n/a	↑
	Cook Inlet	3	1.0	0	0	0	n/a	↓
Bottlenose dolphin	CA/OR/WA Offshore	0	n/a	1	11	2.8	9.4 (29.8)	?
Common dolphin	CA/OR/WA	0	n/a	1	15	3.6	8,353 (0.0)	↑
Pacific white-sided dolphin	NP	54	0.2	6	0	1.6	?	?
Risso's dolphin	CA/OR/WA	0	n/a	1	20	4.6	42.3 (10.9)	?
Killer whale	ENP Offshore	67	27.9	0	0	n/a	n/a	?
	West Coast Transient	13	5.3	0	0	n/a	n/a	↑
	AT1 Transient	2	28.6	0	0	n/a	n/a	↓
	ENP Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	14	2.4	0	0	n/a	n/a	→
	ENP Northern Resident	6	2.3	0	0	n/a	n/a	↑
	ENP Alaska Resident	24	1.0	2	0	0.4	23 (1.7)	↑
Short-finned pilot whale	CA/OR/WA	0	n/a	1	2	0.6	3.3 (18.2)	?
Harbor porpoise	Southeast Alaska	358	12.4 [8]	1	0	0.2	?	↓ or →
	Gulf of Alaska	650	2.1	2	0	0.8	?	?
	Bering Sea	1,746	3.6	1	0	0.4	?	?
Dall's porpoise	CA/OR/WA	0	n/a	1	8	2.2	171.7 (1.3)	?
	Alaska	5,343	6.4	14	0	3.4	?	?
Northern fur seal	Pribilof Islands/Eastern Pacific.	1,576	0.3	13–18	10	7.0	11,166 (0.1)	↓
	California	143	1.0	3–8		4.6	449.2 (1.0)	↑
California sea lion	United States	0	n/a	1	35	8.0	8,811 (0.1)	↑
Steller sea lion	Eastern U.S	914	2.2	7–12	19	7.4	2,390 (0.3)	↑
	Western U.S	3,526	6.9	13–18	0	4.6	79 (5.8)	? [7]
Bearded seal	Alaska (Beringia DPS)	1,727	0.6	2	0	0.8	7,819 (0.0)	?
Harbor seal	California	0	n/a	1	5–14	3.6	1,598 (0.2)	→
	OR/WA Coast	0	n/a	1	2–11	2.2	?	→
	Washington Inland Waters	0	n/a	1	6	1.6	?	→
	Clarence Strait	242	0.8	2	0	0.8	1,181 (0.1)	↑
	Dixon/Cape Decision	153	0.8	2	0	0.8	634 (0.1)	↑
	Sitka/Chatham Strait	965	6.5	3	0	1.0	483 (0.2)	↑
	Lynn Canal/Stephens Passage.	109	1.2	2	0	0.8	105 (0.8)	↓
	Glacier Bay/Ice Strait	69	1.0	2	0	0.8	65 (1.2)	↑
	Cook Inlet/Shelikof Strait	2,622	9.6	2	0	0.8	536 (0.1)	↑
	Prince William Sound	3,194	10.7	3	0	1.0	559 (0.2)	↓
	South Kodiak	3,809	19.8	2	0	0.8	186 (0.4)	↓
	North Kodiak	906	10.9	2	0	0.8	261 (0.3)	↑
	Bristol Bay	187	0.6	2	0	0.8	1,040 (0.1)	↑
	Pribilof Islands	29	12.5	2	0	0.8	7 (11.4)	→
	Aleutian Islands	301	4.7	2	0	0.8	83 (1.0)	↑
Spotted seal	Alaska	2,106	0.5	3	0	1.2	12,368 (0.0)	?
Ringed seal	Alaska	2,066	1.2 [8]	4	0	1.6	?	?
Ribbon seal	Alaska	1,404	0.8	2	0	0.8	9,781.2 (0.0)	?
Northern elephant seal	California Breeding	52	0.0	1	10	2.6	4,873.2 (0.1)	↑

Please see Tables 7, 10, 11, 12, and 14 and preceding text for details.

[1] For some species with multiple stocks, indicated level of take could occur to individuals from any stock (as indicated in table). For some stocks, a range is presented.

[2] Level B harassment totals include estimated take due to acoustic harassment and, for harbor seals and Steller sea lions, estimated take due to physical disturbance. Active acoustic devices are not used for data acquisition by IPHC; therefore, no takes by acoustic harassment are expected for stocks that occur entirely outside of Alaskan waters.

[3] As explained earlier in this document, gear interaction could result in mortality, serious injury, or Level A harassment. Because we do not have sufficient information to enable us to parse out these outcomes, we present such take as a pool. For purposes of this negligible impact analysis we assume the worst case scenario (that all such takes incidental to research activities result in mortality).

[4] This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock as a result of NMFS's fisheries research activities and is the number carried forward for evaluation in the negligible impact analysis (later in this document). To reach this total, we add one to the total for each pinniped that may be captured in trawl gear in each of the three AFSC research areas; one to the total for each pinniped that may be captured in AFSC longline gear in the GOARA and BSAIRA; and one to the total for each pinniped that may be captured in IPHC longline gear. We also add one to the total of each small cetacean that may be captured in trawl gear in the GOARA and BSAIRA and one to the total of each small cetacean that may be captured in gillnet gear (GOARA only). This represents the potential that the take of an unidentified pinniped or small cetacean could accrue to any given stock captured in that gear in that area. The proposed take authorization is formulated as a five-year total; the annual average is used only for purposes of negligible impact analysis. We recognize that portions of an animal may not be taken in a given year.

[5] This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (*i.e.,* total annual human-caused M/SI, which is presented in the SARs) (see Table 3). In parentheses, we provide the estimated maximum annual M/SI expressed as a percentage of this value. For some stocks, a minimum population abundance value (and therefore PBR) is unavailable. In these cases, the proportion of estimated population abundance represented by the Level B harassment total and/or the proportion of residual PBR represented by the estimated maximum annual M/SI cannot be calculated.

[6] See relevant SARs for more information regarding stock status and trends. Interannual increases may not be interpreted as evidence of a trend. Based on the most recent abundance estimates, harbor seal stocks may have reached carrying capacity and appear stable. A time series of stock-specific abundance estimates for harbor porpoise shows either increasing or stable estimates, but it is not statistically valid to infer a trend.

[7] For western Steller sea lions, it is not appropriate to identify a single trend. Using data collected through 2015, there is strong evidence that non-pup and pup counts increased at ~2 percent per year between 2000 and 2015. However, there are strong regional differences across the range in Alaska, with positive trends east of Samalga Pass (~170° W) in the Gulf of Alaska and eastern Bering Sea and negative trends to the west in the Aleutian Islands. For more information, please see Muto *et al.* (2017).

[8] No official abundance estimate is provided for these stocks; however, we use the best available information regarding population abundance for comparison with the proposed total annual Level B harassment authorization. For the minke whale, surveys covering portions of the stock range provide a partial abundance estimate of 2,020 (CV = 0.73) + 1,233 (CV = 0.34) whales. For the fin whale, we use the minimum abundance estimate provided for a portion of the stock range (1,036 whales). Surveys in 2010–2012 provide an abundance estimate of 398 (CV = 0.12) + 577 (CV = 0.14) harbor porpoises in southeast Alaska. However, the resulting total of 975 is not corrected for observer perception bias and porpoise availability at the surface, which is particularly influential for estimates of porpoise abundance. Therefore, we apply a previously estimated correction factor of 2.96 (Hobbs and Waite, 2010) to this estimate for a provisional abundance estimate of 2,886. For the ringed seal, a partial abundance estimate (that does not account for availability bias) of 170,000 seals is given. For more information, please see the relevant SARs.

Analysis—The majority of stocks that may potentially be taken by M/SI (25 of 41) fall below the insignificance threshold (*i.e.,* 10 percent of residual PBR), while an additional 11 stocks do not have current PBR values and therefore are evaluated using other factors. We first consider stocks expected to be affected only by behavioral harassment and those stocks that fall below the insignificance threshold. Next, we consider those stocks above the insignificance threshold (*i.e.,* the offshore stock of bottlenose dolphin, Risso's dolphin, short-finned pilot whale, and the Pribilof Islands stock of harbor seal) and those without PBR values (harbor seal stocks along the Oregon and Washington coasts and in Washington inland waters; three stocks of harbor porpoise; sperm whale; Pacific white-sided dolphin; the Alaska stock of Dall's porpoise; and the ringed seal).

As described in greater depth previously (see ''Acoustic Effects''), we do not believe that AFSC use of active acoustic sources has the likely potential to cause any effect exceeding Level B harassment of marine mammals. We have produced what we believe to be precautionary estimates of potential incidents of Level B harassment. There is a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment and to a meaningful understanding of marine mammal perception of these signals and occurrence in the areas where AFSC operates. The procedure for producing these estimates, described in detail in ''Estimated Take Due to Acoustic Harassment,'' represents NMFS's best effort towards balancing the need to quantify the potential for occurrence of Level B harassment with this general lack of information. The sources considered here have moderate to high output frequencies, generally short ping durations, and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (*e.g.,* energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impacts on marine mammals in comparison with the quantitative estimates that guide our proposed take authorization. We also produced estimates of incidents of potential Level B harassment due to disturbance of hauled-out pinnipeds that may result from the physical presence of researchers; these estimates are combined with the estimates of Level B harassment that may result from use of active acoustic devices.

Here, we consider authorized Level B take less than five percent of population abundance to be de minimis, while authorized Level B taking between 5–15 percent is low. A moderate amount of authorized taking by Level B harassment would be from 15–25 percent, and high above 25 percent. Of the 49 stocks that may be subject to Level B harassment, the level of taking proposed for authorization would represent a de minimis impact for 31 stocks and a low impact for an additional ten stocks. We do not consider these impacts further for these 41 stocks. The level of taking by Level B harassment would represent a moderate impact on one additional stock, the South Kodiak stock of harbor seals; and, therefore, we consider these potential impacts in conjunction with the level of taking by M/SI. The annual taking by M/SI projected for this stock equates to less than one percent of residual PBR; therefore we do not consider this stock further. The total taking by Level B harassment represents a high level of impact for three stocks (gray whale and the offshore and AT1 stocks of killer whale). We discuss these in further detail below. For an additional four stocks (sperm whale and Alaska stocks of three beaked whale species), there is no abundance estimate upon which to base a comparison. However, we note that the anticipated number of incidents of take by Level B harassment are very low (2–22 for these four stocks) and likely represent a de minimis impact on these stocks.

As described previously, there is some minimal potential for temporary effects to hearing for certain marine mammals, but most effects would likely be limited to temporary behavioral disturbance. Effects on individuals that are taken by Level B harassment will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity (*e.g.,* Ellison *et al.,* 2012). Individuals may move away from the source if disturbed; but, because the source is itself moving and because of the directional nature of the sources considered here, there is unlikely to be even temporary displacement from areas of significance and any disturbance would be of short duration. Although there is no information on which to base any distinction between incidents of harassment and individuals harassed, the same factors, in conjunction with the fact that AFSC survey effort is widely dispersed in space and time, indicate that repeated exposures of the same individuals would be very unlikely. For these reasons, we do not consider the proposed level of take by acoustic disturbance to represent a significant additional population stressor when considered in context with the proposed level of take by M/SI for any species, including those for which no abundance estimate is available.

There are no additional impacts other than Level B harassment expected for the three stocks listed above for which Level B harassment is expected to be at a relatively high level, *i.e.,* the gray whale and offshore and AT1 stocks of killer whale (Level B harassment incidents equate to approximately 27, 28, and 29 percent of the stock abundances, respectively). It should be noted that the AT1 stock of transient killer whales has a critically low population abundance of seven whales.

Although the estimate of take by Level B harassment is at 29 percent, this represents only two estimated incidents of temporary and insignificant behavioral disruption, which would not be expected to affect annual rates of recruitment or survival for the stock. We do not discuss these three stocks further.

Similarly, disturbance of pinnipeds on haul-outs by researchers (expected for harbor seals and Steller sea lions in the GOARA and BSAIRA) are expected to be infrequent and cause only a temporary disturbance on the order of minutes. As noted previously, monitoring results from other activities involving the disturbance of pinnipeds and relevant studies of pinniped populations that experience more regular vessel disturbance indicate that individually significant or population level impacts are unlikely to occur. When considering the individual animals likely affected by this disturbance, only a small fraction of the estimated population abundance of the affected stocks would be expected to experience the disturbance.

For Risso's dolphin, short-finned pilot whale, and the offshore stock of bottlenose dolphin, maximum total potential M/SI due to NMFS' fisheries research activity (SWFSC, NWFSC, and AFSC combined) is approximately 11, 18, and 30 percent of residual PBR, respectively. For example, PBR for Risso's dolphin is currently set at 46 and the annual average of known ongoing anthropogenic M/SI is 3.7, yielding a residual PBR value of 42.3. The maximum combined annual average M/SI incidental to NMFS fisheries research activity is 4.6, or 10.9 percent of residual PBR. The only known source of other anthropogenic mortality for these species is in commercial fisheries. For the Risso's dolphin and offshore stock of bottlenose dolphin, such take is considered to be insignificant and approaching zero mortality and serious injury. This is not the case for the short-finned pilot whale; however, the annual take from fisheries (1.2) and from NMFS's fisheries research (0.6) are both very low. There are no other factors that would lead us to believe that take by M/SI of 18 percent of residual PBR would be problematic for this species. Total potential M/SI due to NMFS' fisheries research activity is approximately 11 percent of residual PBR for the Pribilof Islands stock of harbor seals. However, there are no other known sources of anthropogenic M/SI for this stock or other known significant stressors; therefore, there is no indication that the take by M/SI of 11 percent of residual PBR would be problematic for this stock.

PBR is unknown for harbor seals on the Oregon and Washington coasts and in Washington inland waters (comprised of the Hood Canal, southern Puget Sound, and Washington northern inland waters stocks). The Hood Canal, southern Puget Sound, and Washington northern inland waters stocks were formerly a single inland waters stock. Both the Oregon/Washington coast and Washington inland waters stocks of harbor seal were considered to be stable following the most recent abundance estimates (in 1999, stock abundances were estimated at 24,732 and 13,692, respectively). However, a Washington Department of Fish and Wildlife expert (S. Jeffries) stated an unofficial abundance of 32,000 harbor seals in Washington (Mapes, 2013). Therefore, it is reasonable to assume that at worst, the stocks have not declined since the last abundance estimates. Ongoing anthropogenic mortality is estimated at 10.6 harbor seals per year for the coastal stock and 13.4 for inland waters seals; therefore, we reasonably assume that the maximum potential annual M/SI incidental to NMFS' fisheries research activities (2.2 and 1.6, respectively) is a small fraction of any sustainable take level that might be calculated for either stock.

As noted above, PBR is also undetermined for the sperm whale, Pacific white-sided dolphin, three stocks of harbor porpoise, Alaska stock of Dall's porpoise, and the ringed seal. We follow a similar approach as for harbor seals (see above) in evaluating the significance of the proposed M/SI by describing available information regarding population abundance and other sources of anthropogenic M/SI.

- Rice (1989) estimated that there were 930,000 sperm whales in the North Pacific following the conclusion of commercial whaling. However, this estimate included areas beyond the range of the U.S. North Pacific stock of sperm whales. Kato and Miyashita (1998) produced an estimate of 102,112 (CV = 0.155) sperm whales in the western North Pacific. However, this estimate is considered to be positively biased, and includes whales outside of Alaskan waters. Commercial fishing is the only other source of ongoing anthropogenic M/SI, which is estimated to be 3.7 whales per year. When considered in conjunction with the maximum total annual M/SI anticipated as a result of NMFS fisheries research activities (0.4), we expect that the resulting total annual M/SI (4.1) is a small fraction of any sustainable take level that might be calculated for the stock.
- Historically, the minimum population estimate for the Central North Pacific stock of Pacific white-sided dolphin was 26,880, based on the sum of abundance estimates for four separate survey blocks north of 45° N from surveys conducted during 1987–1990, reported in Buckland *et al.* (1993). This was considered a minimum estimate because the abundance of animals in a fifth block, which straddled the boundary of the two stocks for this species, was not included in the estimate for the North Pacific stock. In addition, much of the potential habitat for this stock was not surveyed between 1987 and 1990 (Muto *et al.,* 2017). Using this minimum abundance estimate in the PBR equation, assuming the default 4 percent productivity rate and a recovery factor of 0.5 (as recommended for stocks of unknown status), produces a PBR value of 268.8. There are no other sources of anthropogenic M/SI for this stock. The maximum total annual M/SI anticipated as a result of NMFS fisheries research activities (1.6) would represent 0.6 percent of residual PBR.
- For the Alaska stock of Dall's porpoise, no current estimate of minimum population abundance is available. However, an abundance estimate of 83,400 was estimated on the basis of data collected form 1987–1991 (Hobbs and Lerczak, 1993). Using this population estimate and its associated CV of 0.097, the minimum abundance would be 76,874. Using this estimate with the default productivity rate and the recovery factor for stocks expected to be within the OSP level (Buckland *et al.,* 1993), a PBR value of 1,537.5 may be calculated. Accounting for ongoing M/SI due to commercial fisheries, the maximum total annual M/SI anticipated as a result of NMFS fisheries research activities (3.4) would represent 0.2 percent of residual PBR.
- For the Bering Sea stock of harbor porpoise, a minimum abundance estimate of 40,039 was calculated by Hobbs and Waite (2010) on the basis of a partial abundance estimate, derived from 1999 aerial surveys of Bristol Bay. Although this estimate is formally considered outdated for use in calculating PBR values, we use it here in the same way as the Pacific white-sided dolphin and Dall's porpoise, addressed above. As for the Pacific white-sided dolphin, we use the default productivity rate and recovery factor for stocks of unknown status to calculate a PBR value of 400.4. Accounting for minimal fisheries mortality, the maximum total annual M/SI anticipated as a result of NMFS fisheries research

activities (0.4) would represent 0.1 percent of residual PBR.

• For the Gulf of Alaska stock of harbor porpoise, an minimum abundance estimate of 25,987 was calculated by Hobbs and Waite (2010) on the basis of an abundance estimate derived from 1998 aerial surveys of the western Gulf of Alaska. Using the default productivity rate and recovery factor for stocks of unknown status to calculate a PBR value of 259.9. Accounting for relatively significant ongoing fisheries mortality, the maximum total annual M/SI anticipated as a result of NMFS fisheries research activities (0.8) would represent 0.4 percent of residual PBR.

• A negatively biased minimum abundance estimate of 896 was calculated for the southeast Alaska stock of harbor porpoise on the basis of 2010–2012 aerial surveys (Muto *et al.,* 2017). The estimate is negatively biased because it does not account for observer perception bias and porpoise availability at the surface. However, use of a widely accepted correction factor (2.96) provides a minimum abundance estimate of 2,652 and a corresponding PBR value of 26.5. This PBR value is less than estimated annual ongoing mortality due to commercial fisheries (34). However, the maximum total annual M/SI anticipated as a result of NMFS fisheries research activities (0.2) represents a minimum potential take of one animal over the 5-year period and would represent an insignificant incremental addition to the total annual M/SI (0.6 percent).

• Although NMFS does not provide a formal PBR value for the ringed seal, Muto *et al.* (2017) provide a minimum abundance estimate of 170,000 seals in the U.S. sector of the Bering Sea. This is not considered a reliable estimate for the stock because it does not account for seals in the Chukchi and Beaufort Seas. However, as this is a conservative minimum abundance estimate, we use the corresponding PBR value of 5,100 given by Muto *et al.* (2017). Accounting for minimal ongoing M/SI due to commercial fisheries, as well as ongoing subsistence harvest of ringed seals, the maximum total annual M/SI anticipated as a result of NMFS fisheries research activities (1.6) would represent 0.04 percent of residual PBR.

In summary, our negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices and physical disturbance of pinnipeds consist of, at worst, temporary and relatively minor modifications in behavior; (3) the predicted number of incidents of potential mortality are at insignificant levels for a majority of affected stocks; (4) consideration of additional factors for Risso's dolphin, short-finned pilot whale, the offshore stock of bottlenose dolphin, and the Pribilof Isalnds stock of harbor seal do not reveal cause for concern; (5) total maximum potential M/SI incidental to NMFS fisheries research activity for southeast Alaska harbor porpoise, considered in conjunction with other sources of ongoing mortality, presents only a minimal incremental additional to total M/SI; (6) available information regarding stocks for which no current PBR estimate is available indicates that total maximum potential M/SI is sustainable; and (7) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact. In combination, we believe that these factors demonstrate that the specified activity will have only short-term effects on individuals (resulting from Level B harassment) and that the total level of taking will not impact rates of recruitment or survival sufficiently to result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from the proposed activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) of the MMPA for specified activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Please see Table 15 for information relating to this small numbers analysis. The total amount of taking proposed for authorization is less than five percent for a majority of stocks, and the total amount of taking proposed for authorization is less than one-third of the stock abundance for all stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

In order to issue an LOA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that:

(1) Is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:

(i) Causing the marine mammals to abandon or avoid hunting areas;

(ii) Directly displacing subsistence users; or

(iii) Placing physical barriers between the marine mammals and the subsistence hunters; and

(2) Cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As described in this preamble, the AFSC has requested authorization of take incidental to fisheries research activities within Alaskan waters. The proposed activities have the potential to result in M/SI of marine mammals as a result of incidental interaction with research gear, and have the potential to result in incidental Level B harassment of marine mammals as a result of the use of active acoustic devices or because of the physical presence of researchers at locations where pinnipeds may be hauled out. These activities also have the potential to result in impacts on the availability of marine mammals for subsistence uses. The AFSC is aware of this potential and is committed to implementing actions to avoid or to minimize any such effects to Alaska Native subsistence communities. The AFSC addresses the potential for their proposed research activities to impact subsistence uses on the following factors:

Actions That May Cause Marine Mammals To Abandon or Avoid Hunting Areas

Some AFSC fisheries research efforts use high-frequency mapping and fish-finding sonars to assess abundance and distribution of target stocks of fish. The high frequency transient sound sources operated by the AFSC are used for a wide variety of environmental and remote-object sensing in the marine environment. These acoustic sources, which are present on most AFSC fishery research vessels, include a variety of single, dual, and multi-beam echosounders, sources used to determine the orientation of trawl nets, and several current profilers. Some of these acoustic sources are likely to be audible to some marine mammal species. Among the marine mammals, most of these sources are unlikely to be audible to whales and most pinnipeds, whereas they may be detected by odontocete cetaceans (and particularly high frequency specialists such as harbor porpoise). There is relatively little direct information about behavioral responses of marine mammals, including the odontocete cetaceans to these devices, but the responses that have been measured in a variety of species to audible sounds suggest that the most likely behavioral responses (if any) would be localized short-term avoidance behavior (See ''Potential Effects of Specified Activities on Marine Mammals and their Habitat''). As a general conclusion, while some of the active acoustic sources used during AFSC fisheries research surveys are likely to be detected by some marine species (particularly phocid pinnipeds and odontocete cetaceans), the sound sources with potential for disturbance would be temporary and transient in any particular location as the research vessels move through an area. Any changes in marine mammal behavior in response to the sound sources or physical presence of the research vessel would likely involve temporary avoidance behavior in the vicinity of the research vessel and would return to normal after the vessel passed. Given the small number of research vessels involved and their infrequent and inconsistent presence in any given area from day to day, it is unlikely that the proposed activity would cause animals to avoid any particular area.

Most AFSC fisheries research activities occur well away from land and, in cases where they do approach land, include mitigation measures to minimize the risk of disturbing pinnipeds hauled out on land. Any incidental disturbance of pinnipeds on haul-outs would likely be infrequent and result in temporary or short term changes in behavior. This sporadic and temporary type of disturbance is not likely to result in a change in use or abandonment of a known haul-out.

AFSC fisheries research activities generally are highly transient and short term (*e.g.,* several hours to a day in any one location) in duration and take place well out to sea, far from coastal or ice pack subsistence hunting activities. It is possible, albeit unlikely, for these fisheries research sound sources to interact with migratory species hunted for subsistence such that there could be short term alterations in migratory pathways. However, as described in the AFSC Communication Plan (Appendix B of AFSC's application), the AFSC will work with subsistence users to identify important areas for marine mammals and subsistence hunters early in the planning process as well as in real time to identify the potential for overlap between migratory pathways, key hunting regions and seasons, and proposed fisheries research. This communication should lead to avoidance of any issues of displacement of marine mammals and their prey.

Activities That May Directly Displace Subsistence Users

AFSC fisheries research primarily utilizes ocean-going ships generally suited for offshore work. These vessels are not designed to work in or near sea ice where much of the subsistence harvest of pinnipeds occurs; thus research activities are most likely to occur outside of periods when this type of hunting occurs. Due to the desire to avoid disturbing pinnipeds hauled out on land, these ships largely avoid nearshore routes that might otherwise put them in the path of seal hunters.

Bowhead whale hunts may occur near sea ice in the spring or in open water in the fall. AFSC fisheries research is only conducted during the open water season in the Arctic so there is no risk of potential interference with subsistence hunts in the spring. However, AFSC fisheries research vessels may be present in whale hunting areas in the fall and could potentially interfere with subsistence activities. The communications plan is designed to minimize the risk of any such interference by advance planning and communication between AFSC scientists and subsistence hunting organizations (*e.g.,* Alaska Eskimo Whaling Commission) and real-time communication between AFSC research vessels as they approach subsistence areas and nearby coastal community contacts. The AFSC is committed to alter its research plans to address any concerns about potential interference and to avoid any such interference in the field.

AFSC fisheries research vessels make port calls in established harbors and ports, thus reducing the chances for interaction with the transit of hunters to and from coastal villages to nearby hunting regions. As described in the Communication Plan provided as Appendix B of AFSC's application, in those rare cases where a research vessel may need to anchor offshore from a subsistence community, AFSC personnel will, within the limits of maritime safety, direct the ship to a predetermined location in coordination with the local subsistence community so as to avoid interfering with those activities.

Activities That May Place Physical Barriers (Vessels and Gear) Between the Marine Mammals and the Subsistence Hunters

The AFSC uses a variety of towed nets and sampling gear to conduct its fisheries and ecosystem research. However, current operational guidelines designed to reduce incidental catch of marine mammals include measures that direct activities away from marine mammals near the research vessel (move-on rule). These measures will reduce the possibility for placing any barriers between subsistence hunters and their marine mammal prey. As outlined in the Communication Plan, AFSC will not deploy such research gear when subsistence hunters have been visually observed in the area.

AFSC fisheries research will also strive to avoid working in any areas when migrating species are present in the immediate vicinity. Per the Communication Plan, the AFSC will coordinate both in advance and in real time with known marine mammal hunting communities within the immediate vicinity of research to avoid any interactions between hunting activity and fisheries research vessels or gear.

The AFSC has provided a draft Communication Plan as Appendix B to their application, and we invite comment on that document. The AFSC is committed to conduct its proposed activities in ways that do not affect the availability of marine mammals to subsistence hunters. The AFSC will implement standard operational procedures and mitigation measures to minimize direct impacts on marine mammals and will work with Alaska Native organizations and coastal communities to develop effective

communication protocols to minimize the risk of potential interference with subsistence activities. The AFSC will thus work to ensure that its research activities do not negatively impact the availability of marine mammals to Alaska Native subsistence users.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, we have preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from AFSC's proposed activities.

Adaptive Management

The regulations governing the take of marine mammals incidental to AFSC fisheries research survey operations would contain an adaptive management component. The inclusion of an adaptive management component will be both valuable and necessary within the context of five-year regulations for activities that have been associated with marine mammal mortality.

The reporting requirements associated with this proposed rule are designed to provide OPR with monitoring data from the previous year to allow consideration of whether any changes are appropriate. OPR and the AFSC will meet annually to discuss the monitoring reports and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows OPR to consider new information from different sources to determine (with input from the AFSC regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

There are multiple marine mammal species listed under the ESA with confirmed or possible occurrence in the proposed specified geographical regions (see Table 3). The proposed authorization of incidental take pursuant to the AFSC's specified activity would not affect any designated critical habitat. OPR has initiated consultation with NMFS's Alaska Regional Office under section 7 of the ESA on the promulgation of five-year regulations and the subsequent issuance of LOAs to AFSC under section 101(a)(5)(A) of the MMPA. This consultation will be concluded prior to issuing any final rule.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the AFSC request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare final rules and make final determinations on whether to issue the requested authorizations. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS is the sole entity that would be subject to the requirements in these proposed regulations, and NMFS is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a 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. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 219

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 24, 2018.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 219 is proposed to be amended as follows:

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart F to part 219 to read as follows:

Subpart F—Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries Research

Sec.
219.51 Specified activity and specified geographical region.
219.52 Effective dates.
219.53 Permissible methods of taking.
219.54 Prohibitions.
219.55 Mitigation requirements.
219.56 Requirements for monitoring and reporting.
219.57 Letters of Authorization.
219.58 Renewals and modifications of Letters of Authorization.
219.59–219.60 [Reserved]

Subpart F—Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries Research

§ 219.51 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Alaska Fisheries Science Center (AFSC) and those persons it authorizes, including the International Pacific Halibut Commission (IPHC) or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by AFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the Gulf of Alaska, Bering Sea and Aleutian Islands, Chukchi Sea and Beaufort Sea, or is conducted by the IPHC in the Bering Sea and Aleutian

Islands, Gulf of Alaska, or off the U.S. West Coast.

§ 219.52 Effective dates.

Regulations in this subpart are effective from [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 219.53 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 219.57, the Holder of the LOA (hereinafter ''AFSC'') may incidentally, but not intentionally, take marine mammals within the area described in § 219.51(b) by Level B harassment associated with use of active acoustic systems and physical or visual disturbance of hauled-out pinnipeds and by Level A harassment, serious injury, or mortality associated with use of hook and line gear, trawl gear, and gillnet gear, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 219.54 Prohibitions.

Notwithstanding takings contemplated in § 219.51 and authorized by a LOA issued under § 216.106 of this chapter and § 219.57, no person in connection with the activities described in § 219.51 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 219.57;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than as specified;

(d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 219.55 Mitigation requirements.

When conducting the activities identified in § 219.51(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 219.57 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions:* (1) AFSC shall convey relevant mitigation, monitoring, and reporting requirements to the IPHC, as indicated in the following subparts.

(2) AFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon. AFSC shall convey this requirement to IPHC.

(2) AFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. AFSC shall convey this requirement to IPHC.

(3) AFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented. AFSC shall convey this requirement to IPHC.

(4) When deploying any type of sampling gear at sea, AFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment. AFSC shall convey this requirement to IPHC.

(5) AFSC shall implement handling and/or disentanglement protocols as specified in the guidance that shall be provided to AFSC survey personnel. AFSC shall convey this requirement to IPHC.

(6) AFSC shall not approach within 1 km of locations where marine mammals are aggregated, including pinniped rookeries and haul-outs.

(7) AFSC shall adhere to a final Communication Plan. In summary and in accordance with the Plan, AFSC shall:

(i) Notify and provide potentially affected Alaska Native subsistence communities with the Communication Plan through a series of mailings, direct contacts, and planned meetings throughout the regions where AFSC fisheries research is expected to occur;

(ii) Meet with potentially affected subsistence communities to discuss planned activities and to resolve potential conflicts regarding any aspects of either the fisheries research operations or the Communication Plan;

(iii) Develop field operations plans as necessary, which shall address how researchers will consult and maintain communication with contacts in the potentially affected subsistence communities when in the field, including a list of local contacts and contact mechanisms, and which shall describe operational procedures and actions planned to avoid or minimize the risk of interactions between AFSC fisheries research and local subsistence activities;

(iv) Schedule post-season informational sessions with subsistence contacts from the study areas to brief them on the outcome of the AFSC fisheries research and to assess performance of the Communication Plan and individual field operations or cruise plans in working to minimize effects to subsistence activities; and

(v) Evaluate overall effectiveness of the Communications Plan in year four of any LOA issued pursuant to § 216.106 of this chapter and § 219.57.

(b) *Trawl survey protocols:* (1) AFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station.

(2) AFSC shall initiate marine mammal watches (visual observation) at least 15 minutes prior to beginning of net deployment, but shall also conduct monitoring during any pre-set activities including trackline reconnaissance, CTD casts, and plankton or bongo net hauls. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) AFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals are observed and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, AFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different section of the sampling area, the move-on rule

mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the AFSC shall move again or skip the station. Marine mammals that are sighted shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. AFSC may use best professional judgment in making these decisions.

(4) AFSC shall maintain visual monitoring effort during the entire period of time that trawl gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, AFSC shall take the most appropriate action to avoid marine mammal interaction. AFSC may use best professional judgment in making this decision.

(5) If trawling operations have been suspended because of the presence of marine mammals, AFSC may resume trawl operations when practicable only when the animals are believed to have departed the area. AFSC may use best professional judgment in making this determination.

(6) AFSC shall implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval.

(7) Whenever surface trawl nets are used in southeast Alaska, AFSC must install and use acoustic deterrent devices, with two pairs of the devices installed near the net opening. AFSC must ensure that the devices are operating properly before deploying the net.

(c) *Longline survey protocols:* (1) AFSC shall deploy longline gear as soon as is practicable upon arrival at the sampling station. AFSC shall convey this requirement to IPHC.

(2) AFSC shall initiate marine mammal watches (visual observation) no less than 30 minutes (or for the duration of transit between set locations, if shorter than 30 minutes) prior to both deployment and retrieval of longline gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting. AFSC shall convey this requirement to IPHC.

(3) AFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals are observed in the vicinity of the planned location before gear deployment, and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, AFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different section of the sampling area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the AFSC shall move again or skip the station. Marine mammals that are sighted shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. AFSC may use best professional judgment in making these decisions. AFSC shall convey this requirement to IPHC.

(4) AFSC shall maintain visual monitoring effort during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, AFSC shall take the most appropriate action to avoid marine mammal interaction. AFSC may use best professional judgment in making this decision. AFSC shall convey this requirement to IPHC.

(5) If deployment or retrieval operations have been suspended because of the presence of marine mammals, AFSC may resume such operations when practicable only when the animals are believed to have departed the area. AFSC may use best professional judgment in making this decision. AFSC shall convey this requirement to IPHC.

(d) *Gillnet survey protocols:* (1) AFSC shall conduct gillnet operations as soon as is practicable upon arrival at the sampling station.

(2) AFSC shall conduct marine mammal watches (visual observation) prior to beginning of net deployment. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular).

(3) AFSC shall implement the move-on rule mitigation protocol. If one or more marine mammals are observed in the vicinity of the planned location before gear deployment, and are considered at risk of interacting with research gear, AFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the gear, a further observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the AFSC shall move again or skip the station. Marine mammals that are sighted shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. AFSC may use best professional judgment in making these decisions.

(4) AFSC shall maintain visual monitoring effort during the entire period of time that gillnet gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, and appear to be at risk of interaction with the gear, AFSC shall pull the gear immediately. AFSC may use best professional judgment in making this decision.

(5) If gillnet operations have been suspended because of the presence of marine mammals, AFSC may resume gillnet operations when practicable only when the animals are believed to have departed the area. AFSC may use best professional judgment in making this determination.

(6) AFSC must install and use acoustic deterrent devices whenever gillnets are used. AFSC must ensure that the devices are operating properly before deploying the net.

§ 219.56 Requirements for monitoring and reporting.

(a) AFSC shall designate a compliance coordinator who shall be responsible for ensuring compliance with all requirements of any LOA issued pursuant to § 216.106 of this chapter and § 219.57 and for preparing for any subsequent request(s) for incidental take authorization. AFSC shall convey this requirement to IPHC.

(b) *Visual monitoring program:* (1) Marine mammal visual monitoring shall occur prior to deployment of trawl, longline, and gillnet gear, respectively; throughout deployment of gear and active fishing of research gears (not including longline soak time); prior to

retrieval of longline gear; and throughout retrieval of all research gear. AFSC shall convey this requirement to IPHC.

(2) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated. AFSC shall convey this requirement to IPHC.

(c) *Training:* (1) AFSC must conduct annual training for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. AFSC may determine the agenda for these trainings.

(2) AFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) AFSC shall convey these training requirements to IPHC.

(d) *Handling procedures and data collection:* (1) AFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS's Office of Protected Resources (OPR). AFSC shall convey these procedures to IPHC.

(2) When practicable, for any marine mammal interaction involving the release of a live animal, AFSC shall collect necessary data to facilitate a serious injury determination. AFSC shall convey this requirement to IPHC.

(3) AFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction. AFSC shall convey this requirement to IPHC.

(4) AFSC shall record such data on standardized forms, which will be subject to approval by OPR. AFSC shall also answer a standard series of supplemental questions regarding the details of any marine mammal interaction. AFSC shall convey this requirement to IPHC.

(e) *Reporting:* (1) AFSC shall report all incidents of marine mammal interaction to NMFS's Protected Species Incidental Take database, including those resulting from IPHC activities, within 48 hours of occurrence and shall provide supplemental information to OPR upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) Annual reporting: (i) AFSC shall submit an annual summary report to OPR not later than ninety days following the end of a given year. AFSC shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, ME70, ES60, 7111 (or equivalent sources) were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of all longline, gillnet, and trawl gear, including number of sets, tows, etc., specific to each gear;

(C) Accounts of all incidents of significant marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(D) A written evaluation of the effectiveness of AFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(E) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(F) A summary of all relevant training provided by AFSC and any coordination with NMFS' Alaska Regional Office.

(3) AFSC shall convey these reporting requirements to IPHC and shall provide IPHC reports to OPR subject to the same schedule.

(f) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 219.51(a) of this chapter clearly causes the take of a marine mammal in a prohibited manner, AFSC personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the AFSC Director (or designee). The incident must be reported immediately to OPR and the Alaska Regional Stranding Coordinator, NMFS. OPR will review the circumstances of the prohibited take and work with AFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The immediate decision made by AFSC regarding continuation of the specified activity is subject to OPR concurrence. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s).

(2) In the event that AFSC discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), AFSC shall immediately report the incident to OPR and the Alaska Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (f)(1) of this section. Activities may continue while OPR reviews the circumstances of the incident. OPR will work with AFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that AFSC discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 219.51(a) of this chapter (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), AFSC shall report the incident to OPR and the Alaska Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. AFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR.

(4) AFSC shall convey these requirements to IPHC.

§ 219.57 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, AFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of

time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, AFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, AFSC must apply for and obtain a modification of the LOA as described in § 219.58.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 219.58 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 219.57 for the activity identified in § 219.51(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 219.57 for the activity identified in § 219.51(a) may be modified by OPR under the following circumstances:

(1) Adaptive Management—OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with AFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from AFSC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 219.57, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ § 219.59–219.60 [Reserved]

[FR Doc. 2018–16114 Filed 7–31–18; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 83 Wednesday,

No. 148 August 1, 2018

Part III

Environmental Protection Agency

40 CFR Parts 9 and 721

Significant New Use Rules on Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2017–0366; FRL–9970–23]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 145 chemical substances which were the subject of premanufacture notices (PMNs). The chemical substances are subject to consent orders issued by EPA pursuant to section 5(e) of TSCA. This action requires persons who intend to manufacture (defined by statute to include import) or process any of these 145 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

DATES: This rule is effective on October 1, 2018. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on August 15, 2018.

Written adverse comments on one or more of these SNURs must be received on or before August 31, 2018 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse comments on one or more of these SNURs before August 31, 2018, EPA will withdraw the relevant sections of this direct final rule before its effective date.

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0366, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after August 31, 2018 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the Agency taking?

1. *Direct Final Rule.* EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices obligates EPA to assess risks that may be associated with the significant new uses under the conditions of use and, if appropriate, to regulate the proposed uses before they occur.

2. *Proposed Rule.* In addition to this Direct Final Rule, elsewhere in this issue of the **Federal Register**, EPA is issuing a Notice of Proposed Rulemaking for this rule. If EPA receives no adverse comment, the Agency will not take further action on the proposed rule and the direct final rule will become effective as provided in this action. If EPA receives adverse comment on one or more of SNURs in this action by August 31, 2018 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**), the

Agency will publish in the **Federal Register** a timely withdrawal of the specific SNURs that the adverse comments pertain to, informing the public that the actions will not take effect. EPA would then address all adverse public comments in a response to comments document in a subsequent final rule, based on the proposed rule.

B. What is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 145 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order.
- Information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR. This information may include testing required in a TSCA section 5(e) Order to be conducted by the PMN submitter, as well as testing not required to be conducted but which would also help characterize the potential health and/or environmental effects of the PMN substance. Any recommendation for information identified by EPA was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the chemical substance. Further, any such testing identified by EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models. EPA also recognizes that whether testing/further information is needed will depend on the specific exposure and use scenario in the SNUN. EPA encourages all SNUN submitters to contact EPA to discuss any potential future testing. See Unit VIII. for more information.
- CFR citation assigned in the regulatory text section of this rule. The regulatory text section of each rule specifies the activities designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use. These rules include 145 PMN substances that are subject to Orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) Order usually requires, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition

to the actual NCEL concentration, the comprehensive NCELs provisions in TSCA section 5(e) Orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. EPA expects that persons whose § 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) Order for the same chemical substance.

PMN Numbers: P–14–472 and P–14–496

Chemical names: Polyphosphoric acids, 2-[alkyl-1-oxo-2-propen-1-yl)oxy]ethyl esters, compds. with N-(aminoiminomethyl)urea (generic) (P–14–472) and Polyphosphoric acids, 2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethyl esters, compds. with alkyl amino, polymers with Bu acrylate, N-(hydroxymethyl)propenamide and styrene (generic) (P–14–496).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: April 26, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) uses of the PMN substances are as a site-controlled intermediate (P–14–472) and a paper additive (P–14–496). Based on Structure Activity Relationship (SAR) analysis of test data on acrylates/methacrylates, and other structurally similar substances, there is potential for irritation and sensitization for P–14–472. For P–14–496 there is concern for sensitization based on the presence of formaldehyde and concern for irritation and lung effects from the surfactant properties of the substance. Further, based on SAR analysis of test data on analogous phosphates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 parts per billion (ppb) of P–14–472 and 4 ppb of P–14–496 in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(i) and 5(e)(1)(A)(i), based on a finding that the available information is insufficient to permit a reasoned evaluation of the human health effects of the PMN substances. Further, the Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substances prior to exceeding the confidential production volume limit as specified in the Order.

2. Use of personal protective equipment to prevent dermal exposure.

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the Safety Data Sheet (SDS).

4. No release of the PMN substances resulting in surface water concentrations that exceed 3 ppb for P–14–472 and 4 ppb for P–14–496.

5. No modification of the manufacturing process that results in inhalation exposure and no use involving application methods that generate a dust, mist, or aerosol.

6. Use of the PMN substances only as a site-limited intermediate (P–14–472) and the confidential use specified in the Order (P–14–496).

The SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the fate and human health toxicity of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing a skin sensitization study and a biodegradation test on each substance. In addition, EPA has determined that the results of a pulmonary effects testing of the PMN substance may be potentially useful in characterizing the health effects of the PMN substances. Although the Order does not require this additional testing, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citations: 40 CFR 721.11024 (P–14–472) and 40 CFR 721.11025 (P–14–496).

PMN Number: P–14–630

Chemical name: Bismuth bromide iodide oxide.

CAS number: 340181–06–8.

Effective date of TSCA section 5(e) Order: May 10, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the substance will be used as a pigment for liquid coatings solvent based system; a pigment for powder coatings; and a pigment for polymer materials. Based on test data and physical/chemical properties of the PMN substance, as well as SAR analysis of analogous respirable, poorly soluble particulates, EPA identified concerns for lung effects, including fibrosis. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. EPA assessed risks based on the specific manufacturing, processing, use, distribution/transportation, treatment and disposal processes, process equipment, engineering controls, and handling practices (including worker activities and cleaning procedures) described in the PMN. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the Order.

2. Use of a National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an Assigned Protection Factor (APF) of at least 10 (where there is a potential for inhalation exposures) or compliance with a New Chemical Exposure Limit (NCEL) of 2.4 milligram/meter^3 (mg/m^3) as an 8-hour time-weighted average.

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. No use of the substance in a consumer product that generates a dust, mist, or aerosol.

The SNUR will designate as a ''significant new use'' the absence of these protective measures, and any use to vary or alter, the manufacturing, processing, use, distribution/transportation, treatment and disposal processes, process equipment, engineering controls, and handling practices (including worker activities and cleaning procedures) described in the PMN in such a way as to change the magnitude of inhalation exposure.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity testing. In addition, EPA has determined that the results of a chronic toxicity/carcinogenicity test of the PMN substance may be potentially useful in characterizing the health effects of the PMN substance. Although the Order does not require this additional testing, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11026.

PMN Number: P–15–450

Chemical name: Aluminum cobalt lithium nickel oxide.

CAS number: 177997–13–6.

Effective date of TSCA section 5(e) Order: March 23, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the substance will be used as a mixed metal oxide for batteries. Based on test data on the PMN substance, EPA identified concerns for spleen and kidney toxicity. Based on physical/chemical properties of the PMN substance, as well as SAR analysis of analogous respirable, poorly soluble particulates, EPA identified concerns for lung effects based on lung overload. Based on the crystalline structure of the PMN substance, EPA identified concern for lung carcinogenicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. EPA assessed risks based on the specific manufacturing, processing, use, distribution/transportation, treatment and disposal processes, process equipment, engineering controls, and handling practices (including worker activities and cleaning procedures) described in the PMN. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the time limit as specified in the Order.
2. Use of personal protective equipment including impervious gloves and protective clothing (where there is a potential for dermal exposures).
3. Use of a NIOSH-certified respirator with an APF of at least 1,000 (where there is a potential for inhalation exposure) or compliance with a NCEL of 0.000092 ppm as an 8-hour time-weighted average.
4. Use of the chemical transfer processes and air ventilation processes described in the PMN and the exposure monitoring requirements described in the Order.
5. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.
6. Disposal of the PMN substance by landfill only. Air releases are limited by processes described in the PMN, including filtering through a high-efficiency particulate air filter with an efficiency rate of 99.99%.
7. No domestic manufacture of the PMN substance.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the time limit without performing specific target organ toxicity testing and carcinogenicity testing. In addition, EPA has determined that the results of medical monitoring of the workers exposed to the substance during manufacturing, processing, and use may be potentially useful in characterizing the health effects of the PMN substance. Although the Order does not require this medical monitoring, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11027.

PMN Number: P–15–705

Chemical name: Alkylarylamine (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: May 11, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the substance will be used as a chemical intermediate and as an additive and octane booster in aviation fuels.

Based on test data on the PMN substance, EPA has identified concerns for dermal irritation, developmental toxicity, and blood effects. Based on test data on analogous anilines, EPA has identified concerns for cardiovascular, eye, liver, kidney, and pulmonary effects, as well as bladder cancer. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the Order.
2. Use of personal protective equipment including impervious gloves, full body chemical protective clothing and chemical goggles or equivalent eye protection (where there is a potential for dermal exposure).
3. Use of a NIOSH-certified respirator with an APF of at least 1,000 (where there is a potential for inhalation exposure) or compliance with a NCEL of 0.48 mg/m^3 as an 8-hour time-weighted average. (EPA's estimates indicate that variations of the parameters (including batch size, number of processing sites, days per year of operation) of the uses identified below would not result in inhalation exposure that would indicate a different respirator.)
4. No use of the substance in a consumer product.
5. No use other than as a chemical intermediate or as an additive and octane booster in aviation fuels.
6. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.
7. No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a

SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity testing and a chronic aquatic toxicity test.

CFR citation: 40 CFR 721.11028.

PMN Numbers: P–15–706 and P–15–707

Chemical names: Aliphatic N-alkyl urea polymer containing cyclohexyl groups and trimethoxy silanes (generic) (P–15–706) and Aliphatic N-alkyl urea polymer containing aspartic ester groups and trimethoxy silanes (generic) (P–15–707).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: April 26, 2017.

Basis for TSCA section 5(e) Order: The PMNs state that the generic use of the substances will be as ingredients for multipurpose exterior coatings. Based on SAR analysis on reactive methoxy silane moieties, EPA has identified concerns for irritation to lungs, eyes, and mucus membranes. There are also concerns for acute toxicity, neurotoxicity, and developmental toxicity based on the presence of methanol, and for sensitization if there are residual isocyanates. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the production limit as specified in the Order.

2. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

3. Use of a NIOSH-certified respirator with an APF of at least 10 (where there is a potential for inhalation exposure) or compliance with a NCEL of 0.9 mg/m^3 as an 8-hour time-weighted average. (EPA's estimates indicate that variations of the parameters (including batch size, number of processing sites, days per year of operation) of the uses identified below would not result in inhalation exposure that would indicate a different respirator.)

4. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

5. No manufacture beyond an annual production volume of 250,000 kilograms (kg).

6. Manufacture of the PMN substances to contain no more than 0.1% residual isocyanate by weight.

7. No uses of the substances other than allowed in the Order.

8. No use of the substances in a consumer product.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity testing for P–15–706.

CFR citation: 40 CFR 721.11029 (P–15–706) and 40 CFR 721.11030 (P–15–707).

PMN Numbers: P–16–273 and P–16–274

Chemical names: Alkyl heteromonocycle, polymer with heteromonocycle, carboxyalkyl alkyl ethers (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: April 25, 2017.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substances will be as ingredients in metalworking fluids. Based on submitted test data for P–16–273 and structurally similar surfactants, EPA has identified concerns for dermal sensitization and irritation and lung effects. Based on submitted toxicity data for P–16–273, EPA estimates toxicity to aquatic organisms may occur for both PMNs at concentrations that exceed 10 ppb of the PMN substances in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. No domestic manufacture of the PMN substances.

2. Use of the PMN substances only: (i) For the confidential uses specified in the Order, (ii) at a concentration no greater than 3% of the metalworking fluid, and (iii) used only in closed metalworking systems as specified in the PMNs with no modifications in the process that would result in worker inhalation exposure.

3. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

4. No release of the PMN substances resulting in surface water concentrations that exceed 10 ppb.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the fate and toxicity of the PMN substances may be potentially useful to characterize the health and environmental effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing and a biodegradation test of the PMN substances may be potentially useful in characterizing the health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11031.

PMN Number: P–16–289

Chemical name: Benzene dicarboxylic acid, polymer with alkane dioic acid and aliphatic diamine (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: March 24, 2017.

Basis for TSCA section 5(e) Order: The PMN states the substance will be used as an extrusion compounding molding resin. Based on test data on analogous high molecular weight polymers, EPA has concerns for lung effects, which includes lung overload. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Submission of particle size testing on the PMN substance prior to exceeding the time limit as specified in the Order.

2. Manufacture of the PMN substance such that the solid particle form has a particle size distribution where less than 1% of the particles are less than 10 microns.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the physical/chemical characteristics of the PMN substance may be potentially useful to characterize the health effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to manufacture beyond a certain time period without measuring the particle size distribution to characterize the fraction of the dry particle PMN substance less than 10 microns. In addition, EPA has determined that the results of specific target organ toxicity testing of the PMN substance may be potentially useful in characterizing the health effects of the PMN substance. Although the Order does not require this additional testing, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11032.

PMN Number: P–16–322

Chemical name: Manganese cyclic (tri)amine chloride complex (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: April 25, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be as a pulp bleaching catalyst. Based on test data on an analog, EPA has identified concerns for kidney, blood, and thyroid effects, immunotoxicity, reproductive and developmental toxicity, and neurotoxicity. Based on test data on the PMN substance, EPA estimates that toxicity to aquatic organisms may occur at concentrations that exceed 18 ppb of the PMN substance in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the Order.

2. Use of personal protective equipment to prevent dermal exposure (where there is a potential for dermal exposure).

3. Use of a NIOSH-certified respirator with an APF of at least 25 (where there is a potential for inhalation exposure) or compliance with a NCEL of 1.2 ppm as an 8-hour time-weighted average. (EPA's estimates indicate that variations of the parameters (including batch size, number of processing sites, days per year of operation) of the uses identified below would not result in inhalation exposure that would indicate a different respirator.)

4. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

5. No domestic manufacture of the PMN substance.

6. Process and use of the PMN substance only for the confidential uses and formulation percentage specified in the Order.

7. No release of the PMN substance resulting in surface water concentrations that exceed 18 ppb.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity testing, reproductive/developmental toxicity testing; and chronic aquatic toxicity testing.

CFR citation: 40 CFR 721.11033.

PMN Numbers: P–16–338, P–16–339, P–16–439, and P–16–440

Chemical names: Xanthylium, (sulfoaryl)-bis [(substituted aryl) amino]-, sulfo derivs., inner salts, metal salts (generic) (P–16–338); Substituted triazinyl metal salt, diazotized, coupled with substituted pyridobenzimidazolesulfonic acids, substituted pyridobenzimidazolesulfonic acids, diazotized substituted alkanesulfonic acid, diazotized substituted aromatic sulfonate, diazotized substituted aromatic sulfonate, metal salts (generic) (P–16–339); Carbon black, (organic acidic carbocyclic)-modified, inorganic salt (generic) (P–16–439); and Carbon black, (organic acidic carbocyclic)-modified, metal salt (generic) (P–16–440).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: April 11, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) uses of the PMN substances will be as dyestuffs (P–16–0338 and P–16–0339) and as coloring agents (P–16–0439 and P–16–0440). Based on physical/chemical properties of the PMN substances and test data on analogous poorly respirable particles, EPA has identified concerns for irritation to the eyes, lungs, and mucous membranes, and lung effects. Further, based on SAR analysis of test data on analogous dyes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 200 ppb of the PMN substances in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. No manufacture of the PMN substances beyond the confidential annual production volume specified in the Order.

2. No domestic manufacture of the PMN substances.

3. Import the PMN substances only according to the terms specified and for the confidential uses specified in the Order.

4. No release of the PMN substances to surface waters.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the fate, human health toxicity, and aquatic toxicity of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of a biodegradation test, specific target organ toxicity testing, and acute and chronic aquatic toxicity testing of the PMN

substances may be potentially useful in characterizing the health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citations: 40 CFR 721.11034 (P–16–338), 40 CFR 721.11035 (P–16–339), 40 CFR 721.11036 (P–16–439), and 40 CFR 721.11037 (P–16–440).

PMN Number: P–16–350

Chemical name: Polyaralkyl aryl ester of methacrylic acid (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: March 31, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be as a polymer reactant. Based on test data on methacrylate moieties, EPA has identified concerns for irritation and sensitization based on analogy to methacrylates. Based on SAR analysis of test data on structurally similar respirable surfactants, EPA has identified concerns for lung effects. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

2. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

3. Manufacture of the PMN substance such that it is not less than the minimum average molecular weight identified in the Order and does not contain more than the maximum weight percent of low molecular weight species below 1,000 Daltons.

4. Use of the PMN substance only for the confidential use specified in the Order.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the toxicity of the PMN substance may be potentially useful to characterize the health effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing and a sensitization test of the PMN substance may be potentially useful in characterizing the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11038.

PMN Number: P–16–352

Chemical names: Phenol, 2-[[[3-(octyloxy)propyl]imino]methyl]- (P–16–352, chemical A) and Phenol, 2-[[[3-(decyloxy)propyl]imino]methyl]- (P–16–352, chemical B).

CAS numbers: 1858221–49–4 (P–16–352, chemical A) and 1858221–50–7 (P–16–352, chemical B).

Effective date of TSCA section 5(e) Order: April 21, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the PMN substances will be used as co-catalysts in the manufacturing of release coatings for producing papers and films at a concentration of 1% or less. Based on SAR analysis of test data on analogous phenols, EPA has identified concerns for respiratory and dermal irritation and developmental toxicity. In addition, EPA has identified concerns for liver toxicity and reproductive effects based on the hydrolysis product o-hydroxybenzaldehyde. Further, based on SAR analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the Order.

2. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. No domestic manufacture of the PMN substances.

5. No manufacture of the PMN substances beyond an annual production volume of 250 kg/yr.

6. No use of the PMN substances in application methods that generate a dust, mist, or aerosol.

7. No release of the PMN substance resulting in surface water concentrations that exceed 1 ppb.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity, reproductive/developmental toxicity, and acute aquatic toxicity testing.

CFR citations: 40 CFR 721.11039 (P–16–352, chemical A) and 40 CFR 721.11040 (P–16–352, chemical B).

PMN Number: P–16–358

Chemical name: Alkyl phenol (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: April 24, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the substance will be used as a chemical intermediate. Based on SAR analysis of test data on analogous phenols, EPA has identified concerns for developmental toxicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the Order.

2. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. Use of the PMN substance only as a chemical intermediate.

5. No manufacture, process, or use of the PMN substance in any manner or method that generates a dust, mist, or aerosol or in a non-enclosed process.

6. No release of the PMN substance to surface waters.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity and reproductive/developmental toxicity tests.

CFR citation: 40 CFR 721.11041.

PMN Number: P–16–364

Chemical name: Nitrile-butadiene-acrylate terpolymers (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: March 31, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on SAR analysis of test data on structurally similar respirable particles, EPA has identified concerns for lung effects, including lung overload. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Use of the PMN substance only as a site-limited chemical intermediate.

2. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

3. No manufacture, process, or use of the PMN substance if it contains more than 5% of the particle size distribution less than 10 microns.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing of the PMN substance may be potentially useful in characterizing the health effects of the PMN substance. Although the Order does not require this test, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11042.

PMN Number: P–16–399

Chemical name: Starch, polymer with 2-propenoic acid, potassium salt, oxidized.

CAS number: 1638117–09–5.

Effective date of TSCA section 5(e) Order: April 6, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the substance will be used as an agricultural soil amendment for field crops, agricultural soil amendment for turf applications and direct soil injection with fertilizers, and a compound to be used in preparation of advanced seed coatings. Based on SAR analysis of test data on structurally similar respirable particles, EPA has identified concerns for lung effects, including lung overload. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance that the substance is or will be produced in substantial quantities and that the substance either enters or may reasonably be anticipated to enter the environment in substantial quantities, or there is or may be significant (or substantial) human exposure to the substance. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the time limit as specified in the Order.

2. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. Manufacture of the substance with a particulate size greater than 30 microns.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the toxicity of the PMN substance may be potentially useful to characterize the health and environmental effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to manufacture beyond a certain time limit without performing an acute aquatic toxicity test. In addition, EPA has determined that the results of specific target organ toxicity testing of the PMN substance may be potentially useful in characterizing the health effects of the PMN substance. Although the Order does not require this additional testing, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11043.

PMN Number: P–16–430

Chemical name: Pentanedioic acid, 2-methyl-.

CAS number: 617–62–9.

Effective date of TSCA section 5(e) Order: May 17, 2017.

Basis for TSCA section 5(e) Order: The PMN states the generic (non-confidential) use of the substance will be as a filler. Based on test data on the PMN substance, EPA has identified concerns for systemic and reproductive toxicity. Based on structural analysis on the acid groups and test data, EPA has identified concerns for dermal and respiratory irritation. Further, based on test data on the PMN substance and test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 14 ppb of the PMN substance in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the

substance may present an unreasonable risk of injury to human health and the environment. EPA assessed risks based on the specific processing, use, distribution/transportation, treatment and disposal processes, process equipment, engineering controls, and handling practices (including worker activities and cleaning procedures) described in the PMN. To protect against these risks, the Order requires:

1. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

2. Use of a NIOSH-certified respirator with an APF of at least 10 (where there is a potential for inhalation exposure). (EPA's estimates indicate that variations of the parameters (including batch size, number of processing sites, days per year of operation) of the uses identified below would not result in inhalation exposure that would indicate a different respirator.)

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. No domestic manufacture of the PMN substance.

5. Import of the PMN substance at or below the maximum concentration specified in the Order.

6. No release of the PMN substance resulting in surface water concentrations that exceed 14 ppb.

The SNUR will designate as a ''significant new use'' the absence of these protective measures, and use of the chemical substance to vary or alter the processing, use, distribution, engineering controls, and handling practices described in the Order in such a way as to change the magnitude of inhalation exposure.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the effects of the substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing of the PMN substance may be potentially useful in characterizing the health effects of the PMN substance. Although the Order does not require this test, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information.

CFR citation: 40 CFR 721.11044.

PMN Number: P–16–495

Chemical name: 2-Pentanol, 4-methyl-, reaction products with phosphorus oxide (P2O5), compounds with alkylamine (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: April 25, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the generic use (non-confidential) of the substance will be as a lubricant additive. Based on test data on the substance, EPA has identified concerns for systemic effects, sensitization and irritation to the eyes and skin. Based on physical/chemical properties, EPA has concerns for lung effects, including lung surfactancy. Further, based on test data on analogous aliphatic amines for the cation and neutral organics for the anion as well as test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 200 ppb of the PMN substance in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the Order.

2. Use of personal protective equipment (where there is a potential for dermal exposure).

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. No manufacture in any manner or method that results in inhalation exposure.

5. No use of the PMN substance in an application method that generates a vapor, mist, or aerosol.

6. No release of the PMN substance resulting in surface water concentrations that exceed 200 ppb.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing chronic aquatic toxicity tests. In addition, EPA has determined that the results of specific target organ toxicity testing of the PMN substance may be potentially useful in characterizing the health effects of the PMN substance. Although the Order does not require this additional testing, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11045.

PMN Number: P–16–513

Chemical name: Hydroxy alkylbiphenyl (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: May 2, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the substance will be used as a chemical intermediate. Based on test data on an analog, EPA has identified concerns for developmental toxicity, systemic toxicity, blood effects, and corrosion of the skin, eyes, and mucous membranes. Further, based on SAR analysis of test data on analogous amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 17 ppb of the PMN substances in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the Order.

2. Use of personal protective equipment (where there is a potential for dermal exposure).

3. Use of a NIOSH-certified respirator with an APF of at least 50 (where there is a potential for inhalation exposure). (EPA's estimates indicate that variations of the parameters (including batch size, number of processing sites, days per year of operation) of the uses identified below would not result in inhalation exposure that would indicate a different respirator.)

4. Use of the PMN substance only as a chemical intermediate.

5. No release of the PMN substance resulting in surface water concentrations that exceed 17 ppb.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity and reproductive/developmental toxicity testing. In addition, EPA has determined that the results of acute aquatic toxicity tests may be potentially useful in characterizing the environmental effects of the PMN substance. Although the Order does not require these additional tests, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11046.

PMN Numbers: P–16–534, P–16–535, and P–16–536

Chemical names: Alkyl alkenoic acid, polymer with alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, polyalkylene glycol alkyl ether alkyl alkenoate, dialkylene glycol diheteromonocyclic ether and alkylcarbomonocyclic alkenoate, metal salt (generic) (P–16–534); Alkyl alkenoic acid, polymer with alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, alkanediol diheteromonocyclic ether, polyalkylene glycol alkyl ether alkyl alkenoate and alkylcarbomonocyclic alkenoate, metal salt (generic) (P–16–535); and Alkyl alkenoic acid, polymer with bis heteromonocyclic substituted alkyl carbomonocycle, alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, polyalkylene glycol alkyl ether alkyl alkenoate and alkylcarbomonocyclic alkenoate, metal salt (generic) (P–16–536).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: April 4, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substances will be a component of ink. Based on test data on structurally similar respirable particles, EPA has identified concerns for lung effects if inhaled, based on lung overload. In addition, EPA has identified ecotoxicity concerns for the substances if made with an acid component exceeding 20% of the molecular weight due potential for increased absorption and solubility. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Manufacture of the PMN substances such that the minimum average molecular weight is 1,800 daltons and the carboxylic acid content does not exceed 20%.

2. No domestic manufacture of the PMN substances.

3. Process or use of the PMN substances only for the use specified in the Order.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substances may be potentially useful to characterize the effects of the substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing and an acute aquatic toxicity test of the PMN substances may be potentially useful in characterizing the health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citations: 40 CFR 721.11047 (P–16–534), 40 CFR 721.11048 (P–16–535), and 40 CFR 721.11049 (P–16–536).

PMN Numbers: P–16–549, P–16–550, P–16–551, P–16–553, P–16–555, P–16–556, P–16–557, P–16–558, P–16–560, P–16–561, P–16–562, P–16–563, P–16–564, P–16–565, and P–16–567

Chemical names: Alkaline functionalized methacrylate-substituted polymer (generic) (P–16–549, P–16–550, and P–16–551); Quatenary alkylamine functionalized methacrylate-substituted polymer (generic) (P–16–553); Neutral alcohol functionalized methacrylate-substituted polymer (generic) (P–16–555 and P–16–556); Neutral alkyl salt functionalized methacrylate-substituted polymer (generic) (P–16–557, P–16–558, and P–16–560); Acid functionalized methacrylate-substituted polymer (generic) (P–16–561, P–16–562, P–16–563, P–16–564, and P–16–565); and Alkylamine functionalized methacrylate-substituted polymer (generic) (P–16–567).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: May 2, 2017.

Basis for TSCA section 5(e) Order: The PMN states the substances will be use as crosslinked resins for chromatographic separation of biomolecules and biocatalysts. Based on test data on structurally similar respirable particles, EPA has identified concerns for lung effects, including lung overload. EPA has also identified irritation concerns for skin and eyes. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

2. Manufacture of the PMN substances only in the physical form of spherical beads and with less than 0.1% below a particle size of 10 microns.

3. No domestic manufacture of the PMN substances.

4. Process or use of the PMN substances only for the uses specified in the Order.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substances may be potentially useful to characterize the effects of the substances in support of a request by the PMN submitter to modify the Order, or

if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing of the PMN substances may be potentially useful in characterizing the health effects of the PMN substances. Although the Order does not require this testing, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citations: 40 CFR 721.11050.

PMN Number: P–16–579

Chemical name: Waste plastics, poly(ethylene terephthalate), depolymd. with polypropylene glycol ether with glycerol (3:1), polymers with alkenoic and alkanoic acids (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: March 13, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the substance will be used as an ultraviolet curable coating resin. Based on test data on similar structural moieties, EPA has identified concerns for dermal and respiratory sensitization and irritation of mucous membranes. In addition, EPA has identified human health and environmental concerns for the substance if made with lower molecular weight due potential for increased absorption and solubility. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

1. Use of personal protective equipment including gloves and protective clothing (where there is a potential for dermal exposure).

2. Use of a NIOSH-certified full face respirator with an APF of at least 50 (where there is a potential for inhalation exposure). (EPA's estimates indicate that variations of the parameters (including batch size, number of processing sites, days per year of operation) of the uses identified below would not result in inhalation exposure that would indicate a different respirator.)

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. No manufacture of the PMN substance with an average molecular weight less than 1,100 Daltons.

5. Use of the PMN substance only as an ultraviolet curable coating resin.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the physical-chemical properties and human health and aquatic toxicity of the PMN substance may be potentially useful to characterize the effects of the substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that measurement of certain physical-chemical properties, the results of specific target organ toxicity, reproductive/developmental toxicity, sensitization, and acute and chronic aquatic toxicity testing may be potentially useful in characterizing the health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions on manufacture, processing, distribution in commerce, and disposal will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citation: 40 CFR 721.11051.

PMN Number: P–17–32

Chemical name: 1,3,5-Naphthalenetrisulfonic acid.

CAS number: 6654–64–4.

Effective date of TSCA section 5(e) Order: March 22, 2017.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance is for monitoring of oil/gas well performance. Based on test data on an analog and physical/chemical properties of the PMN substance, EPA has identified concerns for dermal and respiratory irritation, developmental toxicity, and blood effects. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substance prior to exceeding the confidential production volume limit as specified in the Order.

2. Use of personal protective equipment including NIOSH-approved respirator (APF 50) and impervious gloves (where there is a potential for inhalation or dermal exposure). (EPA's estimates indicate that variations of the parameters (including batch size, number of processing sites, days per year of operation) of the uses identified below would not result in inhalation exposure that would indicate a different respirator.)

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. No manufacture or processing of the PMN substance beyond a confidential annual production volume specified in the Order.

5. No manufacture, processing, or use using application methods that intentionally generate a vapor, mist or aerosol.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the effects of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity and developmental toxicity testing.

CFR citation: 40 CFR 721.11052.

PMN Numbers: P–17–33, P–17–34, P–17–36, P–17–38, P–17–39, P–17–41, P–17–42, P–17–43, P–17–45, P–17–47, P–17–50, P–17–52, P–17–55, P–17–57, P–17–59, P–17–61, P–17–62, P–17–63, P–17–64, P–17–66, P–17–67, P–17–69, P–17–71, P–17–72, P–17–73, P–17–75, P–17–76, P–17–79, P–17–80, P–17–83, P–17–85, P–17–87, P–17–90, P–17–91, P–17–93

CHEMICAL NAMES AND CAS NUMBERS

Chemical name	CAS No.
Benzoic acid, 2-fluoro-, sodium salt (1:1) (P–17–33)	6654–64–4
Benzoic acid, 4-fluoro-, sodium salt (1:1) (P–17–34)	499–90–1
Benzoic acid, 2,3,4,5-tetrafluoro-, sodium salt (1:1) (P–17–36)	67852–79–3
Benzoic acid, 2-(trifluoromethyl)-, sodium salt (1:1) (P–17–38)	2966–44–1
Benzoic acid, 4-(trifluoromethyl)-, sodium salt (1:1) (P–17–39)	25832–58–0
Benzoic acid, 2,5-difluoro-, sodium salt (1:1) (P–17–41)	522651–42–9
Benzoic acid, 3-fluoro-, sodium salt (1:1) (P–17–42)	499–57–0
Benzoic acid, 2,6-difluoro-, sodium salt (1:1) (P–17–43)	6185–28–0
Benzoic acid, 3,5-difluoro-, sodium salt (1:1) (P–17–45)	530141–39–0
Benzoic acid, 2,4-difluoro-, sodium salt (1:1) (P–17–47)	1765–08–8
Benzoic acid, 3,4-difluoro-, sodium salt (1:1) (P–17–50)	522651–44–1
Benzoic acid, 3,4,5-trifluoro-, sodium salt (1:1) (P–17–52)	1180493–12–2
Benzoic acid, 2,3,4-trifluoro-, sodium salt (1:1) (P–17–55)	402955–41–3
Benzoic acid, 2,4,5-trifluoro-, sodium salt (1:1) (P–17–57)	522651–48–5
Benzoic acid, 2,3-difluoro-, sodium salt (1:1) (P–17–59)	1604819–08–0
Benzoic acid, 3-(trifluoromethyl)-, sodium salt (1:1) (P–17–61)	69226–41–1
Benzoic acid, 2-chloro-, sodium salt (1:1) (P–17–62)	17264–74–3
Benzoic acid, 4-chloro-, sodium salt (1:1) (P–17–63)	3686–66–6
Benzoic acid, 3-chloro-, sodium salt (1:1) (P–17–64)	17264–88–9
Benzoic acid, 2,3-dichloro-, sodium salt (1:1) (P–17–66)	118537–84–1
Benzoic acid, 2,5-dichloro-, sodium salt (1:1) (P–17–67)	63891–98–5
Benzoic acid, 3,5-dichloro-, sodium salt (1:1) (P–17–69)	154862–40–5
Benzoic acid, 2,6-dichloro-, sodium salt (1:1) (P–17–71)	10007–84–8
Benzoic acid, 3,4-dichloro-, sodium salt (1:1) (P–17–72)	17274–10–1
Benzoic acid, 2,4-dichloro-, sodium salt (1:1) (P–17–73)	38402–11–8
Benzoic acid, 2-chloro-4-fluoro-, sodium salt (P–17–75)	855471–43–1
Benzoic acid, 3-chloro-4-fluoro-, sodium salt (P–17–76)	1421761–18–3
Benzoic acid, 5-chloro-2-fluoro-, sodium salt (P–17–79)	1382106–78–6
Benzoic acid, 4-chloro-3-fluoro-, sodium salt (P–17–80)	1421029–88–0
Benzoic acid, 4-chloro-2-fluoro-, sodium salt (P–17–83)	1382106–64–0
Benzoic acid, 5-bromo-2-chloro-, sodium salt (P–17–85)	1938142–12–1
Benzoic acid, 3-bromo-4-fluoro-, sodium salt (P–17–87)	938142–13–2
Benzoic acid, 2-bromo-5-fluoro-, sodium salt (P–17–90)	1938142–14–3
Benzoic acid, 4-bromo-2-fluoro-, sodium salt (P–17–91)	1938142–15–4
Benzoic acid, 4-bromo-3-fluoro-, sodium salt (P–17–93)	1535169–81–3

Effective date of TSCA section 5(e) Order: March 22, 2017.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substances are for monitoring of oil/gas well performance. Based on test data on an analog, EPA has identified concerns for reproductive, developmental and neurotoxicity, as well as lung toxicity and dermal irritation. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health. EPA assessed risks based on the specific manufacturing, processing, use, process equipment, engineering controls, and handling practices (including worker activities and cleaning procedures) described in the PMN. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substances prior to exceeding the production volume limit as specified in the Order.

2. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

3. Use of a NIOSH-certified respirator with an APF of at least 50 (where there is a potential for inhalation exposure) or compliance with a NCEL of 0.0184 ppm as an 8-hour time-weighted average.

4. Use of processes, process equipment, engineering controls, and handling practices specified in the Order for manufacturing and processing.

5. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

6. No manufacture or process of the PMN substances beyond a confidential annual production volume specified in the Order.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity testing on P–17–0091.

CFR citations: 40 CFR 721.11053.

PMN Numbers: P–17–35, P–17–37, P–17–40, P–17–44, P–17–46, P–17–48, P–17–51, P–17–53, P–17–54, P–17–56, P–17–58, P–17–60, P–17–65, P–17–68, P–17–70, P–17–74, P–17–77, P–17–78, P–17–81, P–17–82, P–17–84, P–17–88, P–17–89, P–17–92, P–17–97

CHEMICAL NAMES AND CAS NUMBERS

Chemical Name	CAS No.
Benzoic acid, 2,3,4,5-tetrafluoro- (P–17–35)	1201–31–6
Benzoic acid, 2-(trifluoromethyl)- (P–17–37)	433–97–6
Benzoic acid, 2,5-difluoro- (P–17–40)	2991–28–8
Benzoic acid, 2,6-difluoro- (P–17–44)	385–00–2
Benzoic acid, 3,5-difluoro- (P–17–46)	455–40–3
Benzoic acid, 2,4-difluoro- (P–17–48)	1583–58–0
Benzoic acid, 3,4-difluoro- (P–17–51)	455–86–7
Benzoic acid, 3,4,5-trifluoro- (P–17–53)	121602–93–5
Benzoic acid, 2,3,4-trifluoro- (P–17–54)	61079–72–9
Benzoic acid, 2,4,5-trifluoro- (P–17–56)	446–17–3
Benzoic acid, 2,3-difluoro- (P–17–58)	4519–39–5
Benzoic acid, 3-(trifluoromethyl)- (P–17–60)	454–92–2
Benzoic acid, 2,3-dichloro- (P–17–65)	50–45–3
Benzoic acid, 3,5-dichloro- (P–17–68)	51–36–5
Benzoic acid, 2,6-dichloro- (P–17–70)	50–30–6
Benzoic acid, 2-chloro-4-fluoro- (P–17–74)	2252–51–9
Benzoic acid, 5-chloro-2-fluoro- (P–17–77)	394–30–9
Benzoic acid, 3-chloro-4-fluoro- (P–17–78)	403–16–7
Benzoic acid, 4-chloro-3-fluoro- (P–17–81)	403–17–8
Benzoic acid, 4-chloro-2-fluoro- (P–17–82)	446–30–0
Benzoic acid, 5-bromo-2-chloro- (P–17–84)	21739–92–4
Benzoic acid, 3-bromo-4-fluoro- (P–17–88)	11007–16–5
Benzoic acid, 2-bromo-5-fluoro- (P–17–89)	394–28–5
Benzoic acid, 4-bromo-3-fluoro- (P–17–92)	153556–42–4
Benzoic acid, 4-bromo-2-fluoro- (P–17–97)	112704–79–7

Effective date of TSCA section 5(e) Order: March 22, 2017.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substances are for monitoring of oil/gas well performance. Based on test data on an analog, EPA has identified concerns for reproductive, developmental and neurotoxicity, as well as lung toxicity and dermal irritation. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health. EPA assessed risks based on the specific manufacturing, processing, use, process equipment, engineering controls, and handling practices (including worker activities and cleaning procedures) described in the PMN. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substances prior to exceeding the production volume limit as specified in the Order.

2. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

3. Use of a NIOSH-certified respirator with an APF of at least 50 (where there is a potential for inhalation exposure) or compliance with a NCEL of 0.0184 ppm as an 8-hour time-weighted average to prevent inhalation exposure.

4. Use of processes, process equipment, engineering controls, and handling practices specified in the Order for manufacturing and processing.

5. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

6. No manufacture or process of the PMN substances beyond a confidential annual production volume specified in the Order.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity and reproductive/developmental toxicity testing on both P–17–35 and P–17–37.

CFR citations: 40 CFR 721.11054.

PMN Numbers: P–17–94, P–17–95, P–17–96, P–17–98, P–17–99, P–17–100, P–17–101, P–17–102, P–17–103, P–17–104, P–17–105, P–17–114, P–17–122, P–17–123, P–17–124, P–17–125, P–17–126, P–17–127, P–17–128, P–17–129, P–17–130, P–17–131, P–17–132, P–17–133, P–17–134, P–17–135, P–17–136, P–17–137, P–17–138, P–17–139, and P–17–140

CHEMICAL NAMES AND CAS NUMBERS

Chemical name	CAS No.
Benzoic acid, 2,3,4,5-tetrafluoro-, ethyl ester (P–17–94)	122894–73–9
Benzoic acid, 4-(trifluoromethyl)-, ethyl ester (P–17–95)	583–02–8
Benzoic acid, 2-(trifluoromethyl)-, ethyl ester (P–17–96)	577–62–8
Benzoic acid, 2,6-difluoro-, ethyl ester (P–17–98)	19064–14–3
Benzoic acid, 2,5-difluoro-, ethyl ester (P–17–99)	708–25–8
Benzoic acid, 2,3,4-trifluoro-, ethyl ester (P–17–100)	351354–50–2
Benzoic acid, 2-bromo-5-fluoro-, ethyl ester (P–17–101)	351354–50–2
Benzoic acid, 3,5-difluoro-, ethyl ester (P–17–102)	350–19–6

CHEMICAL NAMES AND CAS NUMBERS—Continued

Chemical name	CAS No.
Benzoic acid, 5-bromo-2-chloro-, ethyl ester (P–17–103)	76008–73–6
Benzoic acid, 3-chloro-, ethyl ester (P–17–104	1128–76–3
Benzoic acid, 2-chloro-, ethyl ester (P–17–105)	7335–25–3
Benzoic acid, 3-chloro-4-fluoro-, ethyl ester (P–17–114)	137521–81–4
Benzoic acid, 4-bromo-2-fluoro-, ethyl ester (P–17–122)	474709–71–2
Benzoic acid, 2-bromo-4,5-difluoro-, ethyl ester (P–17–123)	144267–97–0
Benzoic acid, 4-bromo-3-fluoro-, ethyl ester (P–17–124)	1130165–74–0
Benzoic acid, 3-bromo-4-fluoro-, ethyl ester (P–17–125)	23233–33–2
Benzoic acid, 4-chloro-2-fluoro-, ethyl ester (P–17–126)	4793–20–8
Benzoic acid, 2,5-dichloro-, ethyl ester (P–17–127)	35112–27–7
Benzoic acid, 4-chloro-3-fluoro-, ethyl ester (P–17–128)	203573–08–4
Benzoic acid, 2-chloro-4-fluoro-, ethyl ester (P–17–129)	167758–87–4
Benzoic acid, 5-chloro-2-fluoro-, ethyl ester (P–17–130)	773139–56–3
Benzoic acid, 2,4-difluoro-, ethyl ester (P–17–131)	108928–00–3
Benzoic acid, 3,4-difluoro-, ethyl ester (P–17–132)	144267–96–9
Benzoic acid, 3,4,5-trifluoro-, ethyl ester (P–17–133)	495405–09–9
Benzoic acid, 2,4,5-trifluoro-, ethyl ester (P–17–134)	351354–41–1
Benzoic acid, 3-(trifluoromethyl)-, ethyl ester (P–17–135)	76783–59–0
Benzoic acid, 2,3-difluoro-, ethyl ester (P–17–136)	773134–65–9
Benzoic acid, 2,6-dichloro-, ethyl ester (P–17–137)	81055–73–4
Benzoic acid, 3,5-dichloro-, ethyl ester (P–17–138)	91085–56–2
Benzoic acid, 2,4-dichloro-, ethyl ester (P–17–139)	56882–52–1
Benzoic acid, 3,4-dichloro-, ethyl ester (P–17–140)	28394–58–3

Effective date of TSCA section 5(e) Order: March 22, 2017.

Basis for TSCA section 5(e) Order: The PMNs state that the substances are for monitoring oil/gas well performance. Based on test data on an analog, EPA has identified concerns for reproductive, developmental and neurotoxicity, as well as lung toxicity and dermal irritation. Further, based on SAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 15 ppb of the PMN substances in surface waters. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and the environment. EPA assessed risks based on the specific manufacturing, processing, use, process equipment, engineering controls, and handling practices (including worker activities and cleaning procedures) described in the PMNs. To protect against these risks, the Order requires:

1. Submission of certain toxicity testing on the PMN substances prior to exceeding the production volume limit as specified in the Order.

2. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

3. Use of a NIOSH-certified respirator with an APF of at least 1,000 (where there is a potential for inhalation exposure) or compliance with a NCEL of 0.0184 ppm as an 8-hour time-weighted average.

4. Use of processes, process equipment, engineering controls, and handling practices specified in the Order for manufacturing and processing.

5. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

6. No manufacture or process of the PMN substances beyond a confidential annual production volume specified in the Order.

7. No release of the PMN substances resulting in surface water concentrations that exceed 15 ppb.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the confidential production limit without performing specific target organ toxicity and reproductive/developmental toxicity testing on P–17–127; specific target organ toxicity testing on P–17–101; and acute aquatic toxicity testing on both P–17–101 and P–17–127.

CFR citations: 40 CFR 721.11055.

PMN Number: P–17–198

Chemical name: Neodymium aluminium alkyl polymer complexes (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: April 27, 2017.

Basis for TSCA section 5(e) Order: The PMN states the generic (non-confidential) use of the substance will be as a catalyst in a closed process. Based on physical/chemical properties of the substance and test data on the PMN substance, EPA has identified concerns for dermal and respiratory irritation, corrosion, developmental toxicity, and lung effects. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

1. Submission of glove permeation testing on the PMN substance prior to exceeding the production volume limit as specified in the Order.

2. Use of personal protective equipment including impervious gloves (where there is a potential for dermal exposure).

3. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

4. No domestic manufacture of the PMN substance.

5. No use in any manner or method where there is potential for inhalation exposure.

6. Use of the PMN substance in a closed system as specified in the PMN.

The SNUR will designate as a ''significant new use'' the absence of these protective measure.

Potentially useful information: EPA has determined that the results of glove permeability testing will help characterize the effectiveness of protective measures to mitigate human health risk of the PMN substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to manufacture beyond a certain time period without performing glove permeability testing.

CFR citation: 40 CFR 721.11056.

PMN Numbers: P–17–272, P–17–273, P–17–274, P–17–275, P–17–276 and P–17–277

Chemical name: Fatty acid amide alkyl amine salts (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: August 4, 2017.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substances will be as a component in asphalt emulsion. Based on SAR analysis of test data on analogous substances, EPA has identified concerns for dermal and respiratory irritation, corrosion, developmental toxicity, systemic effect, sensitization and lung effects. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and environment. To protect against these risks, the Order requires:

1. Use of the PMN substances only for the use specified in the Order.

2. Use of personal protective equipment for workers exposed dermally to the PMN substances (including impervious gloves, chemical goggles or equivalent eye protection and clothing which covers any other exposed areas of the arms and torso).

3. No modification of the manufacture, process or use of the PMN substances if it results in inhalation exposure to vapor, dust, mist or aerosol.

4. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

5. No release of the PMN substances into the waters of the United States.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing of the PMN substances, and acute and chronic aquatic toxicity testing of the PMN substances may be potentially useful in characterizing the health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions on manufacture, processing and distribution in commerce, will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citations: 40 CFR 721.11057.

PMN Numbers: P–17–278, P–17–279 and P–17–280

Chemical name: Fatty acid amide alkyl amine salts (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: August 4, 2017.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substances will be as a component in asphalt emulsion. Based on SAR analysis of test data on analogous substances, EPA has identified concerns for irritation, corrosion, developmental toxicity, systemic effect, sensitization and lung effects. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on insufficient information to make a reasoned evaluation and a finding that the substances may present an unreasonable risk of injury to human health and environment. To protect against these risks, the Order requires:

1. Use of the PMN substances only for the use specified in the Order.

2. Use of personal protective equipment for workers exposed dermally to the PMN substances (including impervious gloves, chemical goggles or equivalent eye protection and clothing which covers any other exposed areas of the arms and torso).

3. No modification of the manufacture, process or use of the PMN substances if it results in inhalation exposure to vapor, dust, mist or aerosol.

4. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

5. No release of the PMN substances into the waters of the United States.

The SNUR will designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and aquatic toxicity of the PMN substances may be potentially useful to characterize the effects of the PMN substances in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing and acute and chronic aquatic toxicity testing of the PMN substances may be potentially useful in characterizing the health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions on manufacture, processing and distribution in commerce will remain in effect until the Order is modified or revoked by EPA based on submission of this or other information that EPA determines is relevant and needed to evaluate a modification request.

CFR citations: 40 CFR 721.11058.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for all 145 chemical substances regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters.

The SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA will be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.
- EPA will identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying Orders, consistent with TSCA section 5(f)(4).

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule. The effective date of this rule is October 1, 2018 without further notice, unless EPA receives written adverse comments before August 31, 2018.

If EPA receives written adverse comments on one or more of these SNURs before August 31, 2018, EPA will withdraw the relevant sections of this direct final rule before its effective date.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse comments must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) consent orders have been issued for all of the chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which will be designated as significant new uses. The identities of 38 of the 145 chemical substances subject to this rule have been claimed as confidential and EPA has received one post-PMN *bona fide* submission (per §§ 720.25 and 721.11) for a chemical substance covered by this action. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore, EPA designates August 1, 2018 (the date of public release of this rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the direct final rule. In developing this rule, EPA has recognized that, given EPA's practice of on occasion posting rules on its website a week or more in advance of **Federal Register** publication, this objective could be thwarted even before that publication.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons will have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: Development of test data is required where the chemical substance subject to the SNUR is also subject to a rule, order or consent agreement under TSCA section 4 (see TSCA section 5(b)(1)).

In the absence of a TSCA section 4 test rule covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all of the listed SNURs. Descriptions of this information is provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

In certain of the TSCA section 5(e) consent orders for the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the

potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier TSCA section 5(e) consent orders required submissions at least 12 weeks) before reaching the specified production limit. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the Consent Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to generate useful information.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at § 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2017–0366.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action establishes SNURs for several new chemical substances that were the subject of PMNs and TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (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 that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate

includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUR submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this action.

This action is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 19, 2018.

Jeffery T. Morris,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11024	2070–0012

40 CFR citation	OMB control No.
721.11025	2070–0012
721.11026	2070–0012
721.11027	2070–0012
721.11028	2070–0012
721.11029	2070–0012
721.11030	2070–0012
721.11031	2070–0012
721.11032	2070–0012
721.11033	2070–0012
721.11034	2070–0012
721.11035	2070–0012
721.11036	2070–0012
721.11037	2070–0012
721.11038	2070–0012
721.11039	2070–0012
721.11040	2070–0012
721.11041	2070–0012
721.11042	2070–0012
721.11043	2070–0012
721.11044	2070–0012
721.11045	2070–0012
721.11046	2070–0012
721.11047	2070–0012
721.11048	2070–0012
721.11049	2070–0012
721.11050	2070–0012
721.11051	2070–0012
721.11052	2070–0012
721.11053	2070–0012
721.11054	2070–0012
721.11055	2070–0012
721.11056	2070–0012
721.11057	2070–0012
721.11058	2070–0012

* * * * *

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.11024 to subpart E to read as follows:

§ 721.11024 Polyphosphoric acids, 2-[alkyl-1-oxo-2-propen-1-yl)oxy]ethyl esters, compds. with N-(aminoiminomethyl)urea (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyphosphoric acids, 2-[alkyl-1-oxo-2-propen-1-yl)oxy]ethyl esters, compds. with N-(aminoiminomethyl)urea (PMN P–14–472) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(i), (ii), (sensitization), (g)(2)(i), (v), (g)(3)(i), (ii), (g)(4)(i), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h), (q), and (y)(1). It is a significant new use to have manufacturing activities that result in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 3.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 5. Add § 721.11025 to subpart E to read as follows:

§ 721.11025 Polyphosphoric acids, 2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethyl esters, compds. with alkyl amino, polymers with Bu acrylate, N-(hydroxymethyl)propenamide and styrene (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyphosphoric acids, 2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethyl esters, compds. with alkyl amino, polymers with Bu acrylate, N-(hydroxymethyl)propenamide and styrene (PMN P–14–496) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a), through (f), (g)(1)(i), (ii), (sensitization), (g)(2)(i), (v), (g)(3)(i), (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q) and (y)(1). It is a significant new use to have manufacturing activities that result in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 4.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 6. Add § 721.11026 to subpart E to read as follows:

§ 721.11026 Bismuth bromide iodide oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as bismuth bromide iodide oxide (PMN P–14–630, CAS No. 340181–06–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5)(respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10), (a)(6)(i) (particulate), (b) (concentration set at 1.0%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 2.4 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so

under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 2.4 mg/m^3), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). It is a significant new use to vary or alter, the manufacturing, processing, and use, distribution/transportation, treatment and disposal processes, process equipment, engineering controls, and handling practices (including worker activities and cleaning procedures) described in the PMN in such a way as to change the magnitude of inhalation exposure. It is a significant new use to use the substance for a consumer product that generates a dust, mist, or aerosol.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), and (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 7. Add § 721.11027 to subpart E to read as follows:

§ 721.11027 Aluminum cobalt lithium nickel oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as aluminum cobalt lithium nickel oxide (PMN P–15–450, CAS No. 177997–13–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000), (a)(6) (particulate) (b) (concentration set at 0.1%), and (c). It is a significant new use to manufacture or process the substance without the chemical transfer processes and air ventilation processes described in the PMN and the exposure monitoring requirements described in the Order.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.000092 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set 0.1%), (f), (g)(1)(ii), (This substance may cause damage to the lung, kidney, and spleen), (g)(1)(vii), (g)(2)(i), (ii), (iii), (When using this substance wear protective gloves/protective clothing/eye protection/face protection), the following human health precautionary statement must appear on the SDS as specified in paragraph (a)(2)(ii): (When using this substance use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.000092 mg/m^3), (g)(2)(v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (24 months and 6 years).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2), and (c)(2). It is a significant new use to release this chemical substance to air unless using the chemical transfer and air ventilation processes described in P–15–0450 including filtering through a high-efficiency particular air filter with an efficiency rate of 99.99% before release to air.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (j) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 8. Add § 721.11028 to subpart E to read as follows:

§ 721.11028 Alkylarylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylarylamine (PMN P–15–705) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), and (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000), (a)(6)(particulate), (a)(6)(v), (vi), (b) (concentration set at 0.1%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.48 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are

approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 0.1%), (f), (g)(1)(i), (ii), (iv), (vi), (vii), (ix), (g)(2)(i), (ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.48 mg/m^3), (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (q). It is a significant new use to use the substance other than as a chemical intermediate or as an additive and octane booster in aviation fuels.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 9. Add § 721.11029 to subpart E to read as follows:

§ 721.11029 Aliphatic N-alkyl urea polymer containing cyclohexyl groups and trimethoxy silanes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aliphatic N-alkyl urea polymer containing cyclohexyl groups and trimethoxy silanes (PMN P–15–706) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i),(iii), (iv), (a)(3) and (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10), (a)(6) (particulate), (a)(6)(v), (vi), (b) (concentration set at 1.0%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.9 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (ix), (g)(2)(i), (ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.9 mg/m^3), (g)(2)(v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (o), (p) (594,000 kilograms, P–15–706 and P–15–707 combined), and (t)(250,000 kilograms, P–15–706 and P–15–707 combined). A significant new use is any manufacture, processing, or use of the PMN substance with more than 0.1% residual isocyanate by weight.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 10. Add § 721.11030 to subpart E to read as follows:

§ 721.11030 Aliphatic N-alkyl urea polymer containing aspartic ester groups and trimethoxy silanes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aliphatic N-alkyl urea polymer containing aspartic ester groups and trimethoxy silanes (PMN P–15–707) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (iv), (a)(3), (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10), (a)(6)(i), (v), (vi), (b) (concentration set at 1.0%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.9 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(1)(ix), (g)(2)(i), (ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.9 mg/m^3), (g)(2)(v), and (g)(5).

Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (o), (p) (594,000 kilograms, P–15–706 and P–15–707 combined), and (t) (250,000 kilograms, P–15–706 and P–15–707 combined). A significant new use is any manufacture, processing, or use of the PMN substance with more than 1% residual isocyanate by weight.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 11. Add § 721.11031 to subpart E to read as follows:

§ 721.11031 Alkyl heteromonocycle, polymer with heteromonocycle, carboxyalkyl alkyl ether (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl heteromonocycle, polymer with heteromonocycle, carboxyalkyl alkyl ether (PMNs P–16–273 and P–16–0274) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (a)(3), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), (dermal sensitization), (g)(2)(i), (ii), (iii), and (v), (g)(3)(i), (ii), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substances for the uses specified in the Order, at a concentration greater than 3% of the metal working fluid, and use other than the closed metal working systems as specified in the PMNs with no modifications in the process that would result in worker inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 10.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 12. Add § 721.11032 to subpart E to read as follows:

§ 721.11032 Benzene dicarboxylic acid, polymer with alkane dioic acid and aliphatic diamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as generically as benzene dicarboxylic acid, polymer with alkane dioic acid and aliphatic diamine (PMN P–16–289) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k)(Manufacture only in a form with a particle size distribution where less than 1.0 percent of the particles are less than 10 microns) and (p) (six months).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.11033 to subpart E to read as follows:

§ 721.11033 Manganese cyclic (tri)amine chloride complex (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as manganese cyclic (tri)amine chloride complex (PMN P–16–322) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 25), (a)(6)(i), (particulate), (b) (concentration set at 1.0%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 1.2 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(iv), (vi), (viii), (ix), (g)(2)(i), (ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 1.2 mg/m^3), (v), (g)(3) (This substance may be toxic to algae. This substance may be harmful to invertebrates), (g)(4)(i), (ii), (do not release to water to yield surface water

concentrations above 18 ppb.), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 18.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 14. Add § 721.11034 to subpart E to read as follows:

§ 721.11034 Xanthylium, (sulfoaryl)-bis [(substituted aryl) amino]-, sulfo derivs., inner salts, metal salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as xanthylium, (sulfoaryl)-bis [(substituted aryl) amino]-, sulfo derivs., inner salts, metal salts (PMN P–16–338) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 15. Add § 721.11035 to subpart E to read as follows:

§ 721.11035 Substituted triazinyl metal salt, diazotized, coupled with substituted pyridobenzimidazolesulfonic acids, substituted pyridobenzimidazolesulfonic acids, diazotized substituted alkanesulfonic acid, diazotized substituted aromatic sulfonate, diazotized substituted aromatic sulfonate, metal salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted triazinyl metal salt, diazotized, coupled with substituted pyridobenzimidazolesulfonic acids, substituted pyridobenzimidazolesulfonic acids, diazotized substituted alkanesulfonic acid, diazotized substituted aromatic sulfonate, diazotized substituted aromatic sulfonate, metal salts (PMN P–16–339) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 16. Add § 721.11036 to subpart E to read as follows:

§ 721.11036 Carbon black, (organic acidic carbocyclic)-modified, inorganic salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbon black, (organic acidic carbocyclic)-modified, inorganic salt (PMN P–16–439) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 17. Add § 721.11037 to subpart E to read as follows:

§ 721.11037 Carbon black, (organic acidic carbocyclic)-modified, metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbon black, (organic acidic carbocyclic)-modified, metal salt (PMN P–16–440) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 18. Add § 721.11038 to subpart E to read as follows:

§ 721.11038 Polyaralkyl aryl ester of methacrylic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as

generically as polyaralkyl aryl ester of methacrylic acid (PMN P–16–350) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1)(i), (ii), (sensitization), (mutagenicity); (g)(2)(i), (ii), (iii), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k). It is a significant new use to manufacture the substance lower than the minimum average molecular weight identified in the Order and to contain more than the maximum weight percent of low molecular weight species below 1,000 daltons identified in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 19. Add § 721.11039 to subpart E to read as follows:

§ 721.11039 Phenol, 2-[[[3-(octyloxy)propyl]imino]methyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 2-[[[3-(octyloxy)propyl]imino]methyl]- (PMN P–16–352, chemical A; CAS No. 1858221–49–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(6)(v), (vi), (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72 (a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (iv), (vi), (ix), (g)(2)(i), (v), (g)(3)(i), (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (p) (10,500 and 13,000 kilograms, respectively, for the total of this substance and the substance subject to 721.11039), (t) (250 kilograms for the total of this substance and the substance subject to 721.11039), and (y)(1).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add § 721.11040 to subpart E to read as follows:

§ 721.11040 Phenol, 2-[[[3-(decyloxy)propyl]imino]methyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 2-[[[3-(decyloxy)propyl]imino]methyl]- (PMN P–16–352, chemical B; CAS No. 1858221–50–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(6)(v), (vi), (particulate), (b) (concentration set at 1.0%), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (iv), (vi), (ix), (g)(2)(i), (v), (g)(3)(i), (ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (p) (10,500 and 13,000 kilograms respectively for the total of this substance and the substance subject to § 721.9998), (t) (250 kilograms for the total of this substance and the substance subject to § 721.9998), and (y)(1).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. Add § 721.11041 to subpart E to read as follows:

§ 721.11041 Alkyl phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl phenol (PMN P–16–358) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (iv), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or

confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ix), (g)(2)(i), (ii), (iii), (v), (g)(4)(iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a) through (c), (g), (q), (y)(1), and (2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 22. Add § 721.11042 to subpart E to read as follows:

§ 721.11042 Nitrile-butadiene-acrylate terpolymers (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as nitrile-butadiene-acrylate terpolymers PMN P–16–364) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(ii), (g)(2)(ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h), (k) (Manufacture of the substance with a particle size distribution where greater than 5.0 percent of the particles are less than 10 microns).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. Add § 721.11043 to subpart E to read as follows:

§ 721.11043 Starch, polymer with 2-propenoic acid, potassium salt, oxidized.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as starch, polymer with 2-propenoic acid, potassium salt, oxidized (PMN P–16–399, CAS No. 1638117–09–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (6) (particulate), When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set 1.0%), (f), (g)(1)(ii), (g)(2)(ii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (Manufacture of the substance with a particulate size less than 30 microns) and (p) (12 months).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d), and (f) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. Add § 721.11044 to subpart E to read as follows:

§ 721.11044 Pentanedioic acid, 2-methyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as pentanedioic acid, 2-methyl- (PMN P–16–430, CAS No. 617–62–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10), (a)(6)(i), (v), (vi), (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), (vi), (g)(2)(i), (ii), (iii), (iv), (v), (g)(3)(i), (ii), (g)(4)(i), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k) (import of the substance at or below the maximum concentration specified in the Order).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 14.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions

of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 25. Add § 721.11045 to subpart E to read as follows:

§ 721.11045 2-Pentanol, 4-methyl-, reaction products with phosphorus oxide (P2O5), compounds with alkylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as generically as 2-pentanol, 4-methyl-, reaction products with phosphorus oxide (P2O5), compounds with alkylamine (PMN P–16–495) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6) (particulate), (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), (iv), (g)(2)(i), (ii), (v), (g)(3)(i), (ii), (g)(4)(i), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q) and (y)(1). A significant new use is any manner or method of manufacturing that results in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 200.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 26. Add § 721.11046 to subpart E to read as follows:

§ 721.11046 Hydroxy alkylbiphenyl (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hydroxy alkylbiphenyl (PMN P–16–513) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50), (a)(6)(i), (v), (vi), (b) (concentration set at 1.0%), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 17.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

■ 27. Add § 721.11047 to subpart E to read as follows:

§ 721.11047 Alkyl alkenoic acid, polymer with alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, polyalkylene glycol alkyl ether alkyl alkenoate, dialkylene glycol diheteromonocyclic ether and alkylcarbomonocyclic alkenoate, metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl alkenoic acid, polymer with alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, polyalkylene glycol alkyl ether alkyl alkenoate, dialkylene glycol diheteromonocyclic ether and alkylcarbomonocyclic alkenoate, metal salt (PMN P–16–534) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k). It is a significant new use to manufacture the substance such that the lowest number average molecular weight is less than 1,800 daltons and the carboxylic acid content exceeds 20 percent).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 28. Add § 721.11048 to subpart E to read as follows:

§ 721.11048 Alkyl alkenoic acid, polymer with alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, alkanediol diheteromonocyclic ether, polyalkylene glycol alkyl ether alkyl alkenoate and alkylcarbomonocyclic alkenoate, metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl alkenoic acid, polymer with alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, alkanediol diheteromonocyclic ether, polyalkylene glycol alkyl ether alkyl alkenoate and alkylcarbomonocyclic alkenoate, metal salt (PMN P–16–535) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as

specified in § 721.80(f) and (k). It is a significant new use to manufacture the substance such that the lowest number average molecular weight is less than 1,800 daltons and the carboxylic acid content exceeds 20 percent).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 29. Add § 721.11049 to subpart E to read as follows:

§ 721.11049 Alkyl alkenoic acid, polymer with bis heteromonocyclic substituted alkyl carbomonocycle, alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, polyalkylene glycol alkyl ether alkyl alkenoate and alkylcarbomonocyclic alkenoate, metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl alkenoic acid, polymer with bis heteromonocyclic substituted alkyl carbomonocycle, alkenylcarbomonocycle telomer with substituted alkanoic acid hydroxyl alkyl substituted alkenyl substituted alkyl ester, polyalkylene glycol alkyl ether alkyl alkenoate and alkylcarbomonocyclic alkenoate, metal salt (PMN P–16–536) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k.) It is a significant new use to manufacture the substance such that the lowest number average molecular weight is less than 1,800 daltons, and the carboxylic acid content exceeds 20 percent).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 30. Add § 721.11050 to subpart E to read as follows:

§ 721.11050 Certain functionalized methacrylate-substituted polymers.

(a)(1) The chemical substances listed in the Table of this section is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substances after they have been reacted (cured).

TABLE—FUNCTIONALIZED METHACRYLATE-SUBSTITUTED POLYMERS

PMN No.	Chemical name
P–16–549	Alkaline functionalized methacrylate-substituted polymer (generic).
P–16–550	Alkaline functionalized methacrylate-substituted polymer (generic).
P–16–551	Alkaline functionalized methacrylate-substituted polymer (generic).
P–16–553	Quatenary alkylamine functionalized methacrylate-substituted polymer (generic).
P–16–555	Neutral alcohol functionalized methacrylate-substituted polymer (generic).
P–16–556	Neutral alcohol functionalized methacrylate-substituted polymer (generic).
P–16–557	Neutral alkyl salt functionalized methacrylate-substituted polymer (generic).
P–16–558	Neutral alkyl salt functionalized methacrylate-substituted polymer (generic).
P–16–560	Neutral alkyl salt functionalized methacrylate-substituted polymer (generic).
P–16–561	Acid functionalized methacrylate-substituted polymer (generic).
P–16–562	Acid functionalized methacrylate-substituted polymer (generic).
P–16–563	Acid functionalized methacrylate-substituted polymer (generic).
P–16–564	Acid functionalized methacrylate-substituted polymer (generic).
P–16–565	Acid functionalized methacrylate-substituted polymer (generic).
P–16–567	Alkylamine functionalized methacrylate-substituted polymer (generic).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(6) (particulate), (b) (concentration set at 1.0%), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k) (crosslinked resin used for chromatographic separation of biomolecules and biocatalysts). It is a significant new use to import the substance in any form other than spherical beads with 0.1 percent less than 10 microns

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (e), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. Add § 721.11051 to subpart E to read as follows:

§ 721.11051 Waste plastics, poly(ethylene terephthalate), depolymd. with polypropylene glycol ether with glycerol (3:1), polymers with alkenoic and alkanoic acids (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as waste plastics, poly(ethylene terephthalate), depolymd. with polypropylene glycol ether with glycerol (3:1), polymers with alkenoic and alkanoic acids (PMN P–16–579) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (4),when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50), (a)(6) (particulate), (b) (concentration set 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1) (This substance may cause respiratory and dermal irritation). (This substance may cause irritation of the mucous membranes). (This substance may cause respiratory and dermal sensitization). (This substance may cause mutagenicity), (g)(2)(i), (ii), (iii), (iv), (v), (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (an ultraviolet curable coating resin). It is a significant new use to manufacture the substance with an average molecular weight less than 1,100 Daltons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 32. Add § 721.11052 to subpart E to read as follows:

§ 721.11052 1,3,5-Naphthalenetrisulfonic acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3,5-naphthalenetrisulfonic acid (PMN P–17–32, CAS No. 6654–64–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iv), (a)(3), (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor of at least 50, (a)(6)(v), (vi), (particulate), (b) (concentration set at 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), (iv), (ix), (g)(2)(i), (ii), (iii), (v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q) and (t).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 33. Add § 721.11053 to subpart E to read as follows:

§ 721.11053 Certain halogenated sodium benzoate salts.

(a)(1) The chemical substances listed in the Table of this section is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE—HALOGENATED SODIUM BENZOATE SALTS

PMN No.	CAS No.	Chemical name
P–17–33	6654–64–4	Benzoic acid, 2-fluoro-, sodium salt (1:1).
P–17–34	499–90–1	Benzoic acid, 4-fluoro-, sodium salt (1:1).
P–17–36	67852–79–3	Benzoic acid, 2,3,4,5-tetrafluoro-, sodium salt (1:1).
P–17–38	2966–44–1	Benzoic acid, 2-(trifluoromethyl)-, sodium salt (1:1).
P–17–39	25832–58–0	Benzoic acid, 4-(trifluoromethyl)-, sodium salt (1:1).
P–17–41	522651–42–9	Benzoic acid, 2,5-difluoro-, sodium salt (1:1).
P–17–42	499–57–0	Benzoic acid, 3-fluoro-, sodium salt (1:1).
P–17–43	6185–28–0	Benzoic acid, 2,6-difluoro-, sodium salt (1:1).
P–17–45	530141–39–0	Benzoic acid, 3,5-difluoro-, sodium salt (1:1).
P–17–47	1765–08–8	Benzoic acid, 2,4-difluoro-, sodium salt (1:1).
P–17–50	522651–44–1	Benzoic acid, 3,4-difluoro-, sodium salt (1:1).
P–17–52	1180493–12–2	Benzoic acid, 3,4,5-trifluoro-, sodium salt (1:1).
P–17–55	402955–41–3	Benzoic acid, 2,3,4-trifluoro-, sodium salt (1:1).
P–17–57	522651–48–5	Benzoic acid, 2,4,5-trifluoro-, sodium salt (1:1).
P–17–59	1604819–08–0	Benzoic acid, 2,3-difluoro-, sodium salt (1:1).
P–17–61	69226–41–1	Benzoic acid, 3-(trifluoromethyl)-, sodium salt (1:1).
P–17–62	17264–74–3	Benzoic acid, 2-chloro-, sodium salt (1:1).
P–17–63	3686–66–6	Benzoic acid, 4-chloro-, sodium salt (1:1).

TABLE—HALOGENATED SODIUM BENZOATE SALTS—Continued

PMN No.	CAS No.	Chemical name
P–17–64	17264–88–9	Benzoic acid, 3-chloro-, sodium salt (1:1).
P–17–66	118537–84–1	Benzoic acid, 2,3-dichloro-, sodium salt (1:1).
P–17–67	63891–98–5	Benzoic acid, 2,5-dichloro-, sodium salt (1:1).
P–17–69	154862–40–5	Benzoic acid, 3,5-dichloro-, sodium salt (1:1).
P–17–71	10007–84–8	Benzoic acid, 2,6-dichloro-, sodium salt (1:1).
P–17–72	17274–10–1	Benzoic acid, 3,4-dichloro-, sodium salt (1:1).
P–17–73	38402–11–8	Benzoic acid, 2,4-dichloro-, sodium salt (1:1).
P–17–75	855471–43–1	Benzoic acid, 2-chloro-4-fluoro-, sodium salt.
P–17–76	1421761–18–3	Benzoic acid, 3-chloro-4-fluoro-, sodium salt.
P–17–79	1382106–78–6	Benzoic acid, 5-chloro-2-fluoro-, sodium salt.
P–17–80	1421029–88–0	Benzoic acid, 4-chloro-3-fluoro-, sodium salt.
P–17–83	1382106–64–0	Benzoic acid, 4-chloro-2-fluoro-, sodium salt.
P–17–85	1938142–12–1	Benzoic acid, 5-bromo-2-chloro-, sodium salt.
P–17–87	938142–13–2	Benzoic acid, 3-bromo-4-fluoro-, sodium salt.
P–17–90	1938142–14–3	Benzoic acid, 2-bromo-5-fluoro-, sodium salt.
P–17–91	1938142–15–4	Benzoic acid, 4-bromo-2-fluoro-, sodium salt.
P–17–93	1535169–81–3	Benzoic acid, 4-bromo-3-fluoro-, sodium salt.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i), (iv), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor of at least 50), (a)(6) (particulate), (a)(6)(v), (vi), (b) (concentration set at 1.0%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.0184 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), (iii), (iv), (vi), (ix), (g)(2)(i), (ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0184 mg/m^3), (g)(2)(v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q) and (t). It is a significant new use to manufacture or process the substances other than for the processes described in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 34. Add § 721.11054 to subpart E to read as follows:

§ 721.11054 Certain halogenated benzoic acids

(a) The chemical substances listed in the Table of this section is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE—HALOGENATED BENZOIC ACIDS

PMN No.	CAS No.	Chemical name
P–17–35	1201–31–6	Benzoic acid, 2,3,4,5-tetrafluoro-.
P–17–37	433–97–6	Benzoic acid, 2-(trifluoromethyl)-.
P–17–40	2991–28–8	Benzoic acid, 2,5-difluoro-.
P–17–44	385–00–2	Benzoic acid, 2,6-difluoro-.
P–17–46	455–40–3	Benzoic acid, 3,5-difluoro-.
P–17–48	1583–58–0	Benzoic acid, 2,4-difluoro-.
P–17–51	455–86–7	Benzoic acid, 3,4-difluoro-.
P–17–53	121602–93–5	Benzoic acid, 3,4,5-trifluoro-.
P–17–54	61079–72–9	Benzoic acid, 2,3,4-trifluoro-.
P–17–56	446–17–3	Benzoic acid, 2,4,5-trifluoro-.
P–17–58	4519–39–5	Benzoic acid, 2,3-difluoro-.
P–17–60	454–92–2	Benzoic acid, 3-(trifluoromethyl)-.
P–17–65	50–45–3	Benzoic acid, 2,3-dichloro-.
P–17–68	51–36–5	Benzoic acid, 3,5-dichloro-.
P–17–70	50–30–6	Benzoic acid, 2,6-dichloro-.

TABLE—HALOGENATED BENZOIC ACIDS—Continued

PMN No.	CAS No.	Chemical name
P–17–74	2252–51–9	Benzoic acid, 2-chloro-4-fluoro-.
P–17–77	394–30–9	Benzoic acid, 5-chloro-2-fluoro-.
P–17–78	403–16–7	Benzoic acid, 3-chloro-4-fluoro-.
P–17–81	403–17–8	Benzoic acid, 4-chloro-3-fluoro-.
P–17–82	446–30–0	Benzoic acid, 4-chloro-2-fluoro-.
P–17–84	21739–92–4	Benzoic acid, 5-bromo-2-chloro-.
P–17–88	11007–16–5	Benzoic acid, 3-bromo-4-fluoro-.
P–17–89	394–28–5	Benzoic acid, 2-bromo-5-fluoro-.
P–17–92	153556–42–4	Benzoic acid, 4-bromo-3-fluoro-.
P–17–97	112704–79–7	Benzoic acid, 4-bromo-2-fluoro-.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (v), (a)(3), (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor of at least 50, (a)(6) (particulate), (a)(6)(v), (vi), (b) (concentration set at 1.0%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.0184 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), (iii), (iv), (vi), (ix), (g)(2)(i), (ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0184 mg/m^3), (g)(2)(v), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q) and (t). It is a significant new use to manufacture or process the substances other than for the processes described in the Order.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 35. Add § 721.11055 to subpart E to read as follows:

§ 721.11055 Certain halogenated benzoic acids ethyl esters.

(a) The chemical substances listed in the Table of this section is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE—HALOGENATED BENZOIC ACID ETHYL ESTERS

PMN No.	CAS No.	Chemical name
P–17–94	122894–73–9	Benzoic acid, 2,3,4,5-tetrafluoro-, ethyl ester.
P–17–95	583–02–8	Benzoic acid, 4-(trifluoromethyl)-, ethyl ester.
P–17–96	577–62–8	Benzoic acid, 2-(trifluoromethyl)-, ethyl ester.
P–17–98	19064–14–3	Benzoic acid, 2,6-difluoro-, ethyl ester.
P–17–99	708–25–8	Benzoic acid, 2,5-difluoro-, ethyl ester.
P–17–100	351354–50–2	Benzoic acid, 2,3,4-trifluoro-, ethyl ester.
P–17–101	351354–50–2	Benzoic acid, 2-bromo-5-fluoro-, ethyl ester.
P–17–102	350–19–6	Benzoic acid, 3,5-difluoro-, ethyl ester.
P–17–103	76008–73–6	Benzoic acid, 5-bromo-2-chloro-, ethyl ester.
P–17–104	1128–76–3	Benzoic acid, 3-chloro-, ethyl ester.
P–17–105	7335–25–3	Benzoic acid, 2-chloro-, ethyl ester.
P–17–114	137521–81–4	Benzoic acid, 3-chloro-4-fluoro-, ethyl ester.
P–17–122	474709–71–2	Benzoic acid, 4-bromo-2-fluoro-, ethyl ester.
P–17–123	144267–97–0	Benzoic acid, 2-bromo-4,5-difluoro-, ethyl ester.
P–17–124	1130165–74–0	Benzoic acid, 4-bromo-3-fluoro-, ethyl ester.
P–17–125	23233–33–2	Benzoic acid, 3-bromo-4-fluoro-, ethyl ester.
P–17–126	4793–20–8	Benzoic acid, 4-chloro-2-fluoro-, ethyl ester.
P–17–127	35112–27–7	Benzoic acid, 2,5-dichloro-, ethyl ester.
P–17–128	203573–08–4	Benzoic acid, 4-chloro-3-fluoro-, ethyl ester.
P–17–129	167758–87–4	Benzoic acid, 2-chloro-4-fluoro-, ethyl ester.
P–17–130	773139–56–3	Benzoic acid, 5-chloro-2-fluoro-, ethyl ester.
P–17–131	108928–00–3	Benzoic acid, 2,4-difluoro-, ethyl ester.

TABLE—HALOGENATED BENZOIC ACID ETHYL ESTERS—Continued

PMN No.	CAS No.	Chemical name
P–17–132	144267–96–9	Benzoic acid, 3,4-difluoro-, ethyl ester.
P–17–133	495405–09–9	Benzoic acid, 3,4,5-trifluoro-, ethyl ester.
P–17–134	351354–41–1	Benzoic acid, 2,4,5-trifluoro-, ethyl ester.
P–17–135	76783–59–0	Benzoic acid, 3-(trifluoromethyl)-, ethyl ester.
P–17–136	773134–65–9	Benzoic acid, 2,3-difluoro-, ethyl ester.
P–17–137	81055–73–4	Benzoic acid, 2,6-dichloro-, ethyl ester.
P–17–138	91085–56–2	Benzoic acid, 3,5-dichloro-, ethyl ester.
P–17–139	56882–52–1	Benzoic acid, 2,4-dichloro-, ethyl ester.
P–17–140	28394–58–3	Benzoic acid, 3,4-dichloro-, ethyl ester.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (v), (a)(3), (4), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (a)(5) (respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor of at least 1000), (a)(6) (particulate), (a)(6)(v), (vi), (b) (concentration set at 1.0%), and (c).

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA section 5(e) Order for this substance. The NCEL is 0.0184 mg/m^3 as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1)(i), (ii), (iii), (iv), (vi), (ix), (g)(2)(i), (ii), (iii), (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0184 mg/m^3), (g)(2)(v), (g)(3)(i), (ii), (g)(4)(i), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q) and (t). It is a significant new use to manufacture or process the substances other than for processes described in the Order.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 15 ppb.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 36. Add § 721.11056 to subpart E to read as follows:

§ 721.11056 Neodymium aluminium alkyl polymer complexes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as *n*eodymium aluminium alkyl polymer complexes (PMN P–17–198) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (ii), (iii), (a)(3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (b) (concentration set 1.0%), and (c).

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set 1.0%), (f), (g)(1)(ix), (The substance may react violently with water, (This substance may cause skin irritation and corrosion), (This substance may cause respiratory complications, irritation, and corrosion), (g)(2)(i), (ii), (iii), (When using this substance use in closed system to prevent any inhalation exposure), (When using this substance use skin and eye protection), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(c) (It is a significant new use to process the substance in manner that results in inhalation exposure.), (f), and (p) (8 months).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 37. Add § 721.11057 to subpart E to read as follows:

§ 721.11057 Fatty acid amide alkyl amine salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acid amide alkyl amine salts (PMN P–17–272, P–17–273, P–17–274, P–17–275, P–17–276 and P–17–277) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section

do not apply to quantities of the substances after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (iv), (a)(3). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1) (skin irritation), (respiratory complication), (internal organ effect), (systemic effect), (sensitization), (g)(2)(i), (ii), (iii), (v), (g)(3)(i), (ii), (g)(4)(i), (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), and (y)(1).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

■ 38. Add § 721.11058 to subpart E to read as follows:

§ 721.11058 Fatty acid amide alkyl amine salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as fatty acid amide alkyl amine salts (PMN P–17–278, P–17–279 and P–17–280) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substances after they have been reacted (cured).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), (iv), (a)(3). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e) (concentration set at 1.0%), (f), (g)(1) (skin irritation), (respiratory complication), (internal organ effect), (systemic effect), (sensitization), (g)(2)(i), (ii), (iii), (v), (g)(3)(i), (ii), (g)(4)(i), (iii), and (g)(5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System (GHS) and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), and (y)(1).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

[FR Doc. 2018–15995 Filed 7–31–18; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 83, No. 148

Wednesday, August 1, 2018

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

37421–37734 1

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 6042/P.L. 115–222
To amend title XIX of the Social Security Act to delay the reduction in Federal medical assistance percentage for Medicaid personal care services furnished without an electronic visit verification system, and for other purposes. (July 30, 2018; 132 Stat. 1560)

S. 2692/P.L. 115–223
To designate the facility of the United States Postal Service located at 4558 Broadway in New York, New York, as the "Stanley Michels Post Office Building". (July 30, 2018; 132 Stat. 1562)

Last List July 31, 2018

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 2018

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
August 1	Aug 16	Aug 22	Aug 31	Sep 5	Sep 17	Oct 1	Oct 30
August 2	Aug 17	Aug 23	Sep 4	Sep 6	Sep 17	Oct 1	Oct 31
August 3	Aug 20	Aug 24	Sep 4	Sep 7	Sep 17	Oct 2	Nov 1
August 6	Aug 21	Aug 27	Sep 5	Sep 10	Sep 20	Oct 5	Nov 5
August 7	Aug 22	Aug 28	Sep 6	Sep 11	Sep 21	Oct 9	Nov 5
August 8	Aug 23	Aug 29	Sep 7	Sep 12	Sep 24	Oct 9	Nov 6
August 9	Aug 24	Aug 30	Sep 10	Sep 13	Sep 24	Oct 9	Nov 7
August 10	Aug 27	Aug 31	Sep 10	Sep 14	Sep 24	Oct 9	Nov 8
August 13	Aug 28	Sep 4	Sep 12	Sep 17	Sep 27	Oct 12	Nov 13
August 14	Aug 29	Sep 4	Sep 13	Sep 18	Sep 28	Oct 15	Nov 13
August 15	Aug 30	Sep 5	Sep 14	Sep 19	Oct 1	Oct 15	Nov 13
August 16	Aug 31	Sep 6	Sep 17	Sep 20	Oct 1	Oct 15	Nov 14
August 17	Sep 4	Sep 7	Sep 17	Sep 21	Oct 1	Oct 16	Nov 15
August 20	Sep 4	Sep 10	Sep 19	Sep 24	Oct 4	Oct 19	Nov 19
August 21	Sep 5	Sep 11	Sep 20	Sep 25	Oct 5	Oct 22	Nov 19
August 22	Sep 6	Sep 12	Sep 21	Sep 26	Oct 9	Oct 22	Nov 20
August 23	Sep 7	Sep 13	Sep 24	Sep 27	Oct 9	Oct 22	Nov 21
August 24	Sep 10	Sep 14	Sep 24	Sep 28	Oct 9	Oct 23	Nov 23
August 27	Sep 11	Sep 17	Sep 26	Oct 1	Oct 11	Oct 26	Nov 26
August 28	Sep 12	Sep 18	Sep 27	Oct 2	Oct 12	Oct 29	Nov 26
August 29	Sep 13	Sep 19	Sep 28	Oct 3	Oct 15	Oct 29	Nov 27
August 30	Sep 14	Sep 20	Oct 1	Oct 4	Oct 15	Oct 29	Nov 28
August 31	Sep 17	Sep 21	Oct 1	Oct 5	Oct 15	Oct 30	Nov 29